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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 496

DAVID BURNET, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

ERNEST BROOKS, HAROLD WILSON BROOKS AND WALTER DOUGLAS BROOKS, AS EXECUTORS OF THE WILL OF ERNEST AUGUSTUS BROOKS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 4, 1932
CERTIORARI GRANTED DECEMBER 5, 1932

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1 Before United States Board of Tax Appeals

Docket No. 32401

ERNEST BROOKS, HAROLD WILSON BROOKS, AND WALTER DOUGLAS Brooks, as executors of the estate of Ernest Augustus Brooks, petitioners

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Appearances: For taxpayer: James L. Dohr, Esq.; for commissioner, Frank T. Horner, Esq.

Docket entries

1927

Nov. 19. Petition received and filed. Taxpayer notified. (Fee paid.)

" 21. Copy of petition served on general counsel.

1928

Jan. 18. Answer filed by general counsel.

" 20. Copy of answer served on taxpayer. General calendar.

1929

Oct. 9. Hearing set December 5, 1929.

" 28. Application for order to take depositions, filed by taxpayer.

Nov. 4. Order to take depositions of Ernest Brooks, entered.

" 13. Deposition of Ernest Brooks, filed. (1) Copy served by notary.

Dec. 5. Hearing held before Charles M. Trammell, Div. 2, on merits. Depositions filed. Petitioner's brief due in 30 days. Respondent's reply due in 30 days. Petitioner 15 days to reply.

1930

Jan. 6. Brief filed by taxpayer.

" 7. Copy of brief served on general counsel.

" 14. Transcript of hearing of December 5, 1929, filed.

Feb. 6. Reply brief filed by general counsel.

" 19. Reply brief filed by taxpayer.

" 20. Copy of brief served on general counsel.

Dec. 8. Motion for leave to cite decision in case of estate of Rhobie Caldwell Smallman, filed by general counsel. December 9, 1930, granted.

1931

Feb. 5. Findings of fact and opinion rendered, Charles M. Trammell, Div. 2. Judgment will be entered under rule 50.

Mar. 3. Notice of proposed redetermination, filed by general counsel.

Mar. 5. Hearing set April 1, 1931, on motion.
" 6. Consent to settlement, filed by taxpayer (letter).
" 7. Consent to settlement, filed by taxpayer.
" 11. Decision entered, Logan Morris, Div. 14.
Sept. 5. Petition for review to U. S. Circuit Court of Appeals (2) with assignments of error, filed by general counsel.
" 14. Proof of service filed.
2 Oct. 28. Motion for extension to Jan. 4, 1932, to complete and transmit record, filed by general counsel.
" 30. Order of extension to January 4, 1932, to complete and transmit record, entered.

1932

Jan. 2. Motion for extension to March 4, 1932, to complete and transit record, filed by general counsel.
" 4. Order enlarging time to March 4, 1932, to prepare evidence and transmit record *sur* petition for review, entered.
Mar. 3. Præcipe filed. Proof of service thereon.
" 3. Agreed statement of evidence lodged.
" 3. Agreed statement of evidence approved and ordered filed.
" 4. Order enlarging time to April 30, 1932, for transmission and delivery of record *sur* petition for review, entered.

Before United States Board of Tax Appeals

[Titled omitted.]

Petition

Filed Nov. 19, 1927

The above-named petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency of October 13th, 1927, symbols MT–ET–C1–NR–12402–FOB, and as a basis of their proceedings allege as follows:

1. The petitioners are the executors of the estate of Ernest Augustus Brooks, with an office at 52 Broadway, New York, N. Y. (c/o Messrs. Greene and Hurd).

2. The notice of deficiency (a copy of which is attached and marked " Exhibit A ") was mailed to the petitioners on October 13th, 1927.

3. The taxes in controversy are estate taxes and for twenty-four thousand eight hundred sixty-five and 88/100 dollars ($24,865.88).

4. The determination of tax set forth in said notice of deficiency is based upon the following errors:

A. The Commissioner of Internal Revenue erred in including as part of the gross estate of a nonresident decedent, bonds of foreign corporations and accrued interest thereon in the amount of $24,384.97.

B. The Commissioner of Internal Revenue erred in including as part of the gross estate of a nonresident decedent, bonds of foreign governments and accrued interest thereon in the amount of $55,610.49.

C. The Commissioner of Internal Revenue erred in including as part of the gross estate of a nonresident decedent, bonds of
3 domestic corporations and accrued interest thereon in the amount of $460,315.32.

D. The Commissioner of Internal Revenue erred in including as part of the gross estate of a nonresident decedent, bonds of domestic municipalities and accrued interest thereon in the amount of $15,073.57.

E. The Commissioner of Internal Revenue erred in including as part of the gross estate of a nonresident decedent, stock in foreign corporations in the amount of $50,000.

F. The Commissioner of Internal Revenue erred in including as part of the gross estate of a nonresident decedent, balance on deposit with the banking firm of Lawrence Turnure & Company, New York City, in the amount of $14,517.98.

5. The facts upon which these petitioners rely as a basis of this proceeding are as follows:

A. The petitioners are the duly appointed and qualified executors of the estate of Ernest Brooks, deceased.

B. Ernest Augustus Brooks died on October 31st, 1924, and was at the time of his death a citizen of the Kingdom of Great Britain and a resident of the Republic of Cuba.

C. At the date of his death said Ernest Augustus Brooks owned the following securities which were in a safe-deposit box in New York City, U. S. A.:

(1) Bonds of foreign corporations and accrued interest thereon in the amount of $24,384.97.

(2) Bonds of foreign governments and accrued interest thereon in the amount of $55,610.49.

(3) Bonds of domestic corporations and accrued interest thereon in the amount of $460,315.32.

(4) Bonds of domestic municipalities and accrued interest thereon in the amount of $15,073.57.

(5) Stock in foreign corporations in the amount of $50,000.

D. At the time of his death said Ernest Augustus Brooks had cash on deposit with Lawrence Turnure & Company, New York City, in the amount of $14,517.98.

E. On information and belief that said firm of Lawrence Turnure & Company was a copartnership of persons carrying on a banking business.

F. That said Ernest Augustus Brooks was not engaged in business in the United States at the time of his death.

G. That the entire deficiency of $24,865.88 herein mentioned arises from the errors above set forth by the Commissioner of Internal Revenue.

Wherefore, the petitioners pray that this board may hear the proceeding and enter an order that there is no deficiency in the estate tax of this estate.

JAMES L. DOHR,
Counsel for petitioners.

Office & P. O. address: No. 52 Broadway, Borough of Manhattan, city of New York.

4 *Duly sworn to by Ernest Brooks, jurat omitted in printing.*

Exhibit "A" to petition

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, Oct. 13, 1927.

MT-ET-Cl.-NR-12402-FOB.
District of 3rd New York.
Estate of Ernest Augustus Brooks.
Date of death, October 31, 1924.

ERNEST BROOKS, ET AL.,
Executors, Estate of Ernest Augustus Brooks,
% Green and Hurd, Attorneys,
52 Broadway, New York, New York.

SIRS: The bureau has examined the protest filed on behalf of the above-named estate against the tentative findings set forth in the letter addressed to the executor by this office under date of Dec. 24, 1926. The deficiency hereby determined amounts to $24,865.88, and is fully explained in the attached statement, consisting of two pages, showing the action of the bureau with respect to the protest.

In accordance with the provisions of Title III of the revenue act of 1926, you are allowed 60 days from the date of the mailing of this letter (not counting Sunday as the sixtieth day) within which to file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency. Any such petition must be addressed to the United States Board of Tax Appeals, Earle Building, Washington, D. C., and must be mailed in time to reach the said board within the 60-day period prescribed.

Where a taxpayer has been given an opportunity to file a petition with the United States Board of Tax Appeals and has not done so within the 60 days prescribed, and an assessment has been made, or where a taxpayer has filed a petition and an assessment in accordance with the decision, which has become final, has been made, the unpaid amount of such assessment must be paid upon notice and de-
5 mand from the collector of internal revenue. No claim for abatement can be entertained.

If you acquiesce in this determination and do not desire to file a petition with the United States Board of Tax Appeals you are re-

quested to execute the enclosed Form 890, waiving (1) your right to file a petition with the United States Board of Tax Appeals and (2) the restrictions on the assessment and collection of such deficiency, and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of the Estate Tax Division, Miscellaneous Tax Unit. In the event that you acquiesce in only a part of the determination, the enclosed form of waiver should be executed with respect to the amount of the deficiency to which you agree.

Respectfully,

(Signed) D. H. BLAIR, *Commissioner.*

QR

Enclosures:

Statement.

Waiver—Form 890.

The items involved in your protest are indicated below:

Gross estate	Returned	Tentatively determined	Determined
Schedule B			
Bonds of foreign corporation and accrued interest thereon	$0.00	$24,384.97	$24,384.97
Bonds of foreign governments and accrued interest thereon	.00	55,610.49	55,610.49
Bonds of domestic corporations and accrued interest thereon	.00	460,315.32	460,315.32
Bonds of domestic municipalities and interest thereon	.00	15,073.57	15,073.52
Stock in foreign corporations	.00	50,000.00	50,000.00
Schedule C			
Balance on deposit with Lawrence Turnure & Company	.00	14,517.98	14,517.98

As no adjustment is shown, the following findings are made:

	Returned	Determined
Gross estate, wherever situated	$784,887.25	$792,470.39
Gross estate in the United States	34,021.75	654,137.96
Deductions	501.51	9,119.98
Net estate within the United States	33,520.24	645,017.98
Tax returned	335.20	25,201.08
Deficiency		24,865.88

On account of payment of State inheritance taxes there is allowable against the Federal estate tax a credit of not to exceed 25 per centum thereof. Accordingly, the portion of the deficiency proposed for assessment is $24,732.76, together with interest thereon at the rate of 6 per centum per annum from one year after the decedent's death to the date of assessment, or to the 30th day after the filing of waiver, Form 890, whichever is the earlier.

6 Before United States Board of Tax Appeals

Answer

Filed Jan. 18, 1928

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, general counsel, Bureau of Internal Revenue, in answer to the petition of the above-named taxpayers, admits and denies as follows:

1. Admits the allegations contained in the paragraph of the petition numbered 1.

2. Admits the allegations contained in the paragraph of the petition numbered 2.

3. Admits so much of the paragraph of the petition numbered 3 as alleges that the taxes in controversy are estate taxes, and denies all other allegations contained in the paragraph of the petition numbered 3.

4. Denies that the commissioner, in determining the deficiency tax, committed error, as alleged in the paragraph of the petition numbered 4.

5. A and B. Admits the allegations contained in subdivisions A and B of the paragraph of the petition numbered 5.

5. C. Admits so much of subdivision C of the paragraph of the petition numbered 5 as alleges that at the date of his death, said Ernest Augustus Brooks owned securities of the value and descriptions stated in said subdivision C, which were in New York City, U. S. A., and denies all other allegations contained in said subdivision C of the paragraph of the petition numbered 5.

5. D. Admits the allegations contained in subdivision D of the paragraph of the petition numbered 5.

5. E, F, and G. Denies the allegations contained in subdivisions E, F, and G of the paragraph of the petition numbered 5.

6. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore it is respectfully prayed that the determination of the commissioner be approved.

C. M. CHAREST,
General Counsel, Bureau of Internal Revenue.

Of counsel:

FRANK T. HORNER,
Special Attorney, Bureau of Internal Revenue.

FTH/y.
1/13/28.

(Indorsed:) A true Copy: Teste. B. D. Gamble, Clerk U. S. Board of Tax Appeals. [Seal.]

Before United States Board of Tax Appeals

ERNEST BROOKS, HAROLD WILSON BROOKS, AND WALTER DOUGLAS BROOKS, Executors of the Estate of Ernest Augustus Brooks, petitioners

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket No. 32401. Promulgated February 5, 1931

Findings of fact and opinion

The decedent died on October 31, 1924, a citizen of Great Britain and a resident of Cuba. At the time of his death he was not engaged in business in the United States, but was possessed of certain intangible property consisting of stock in a foreign corporation and bonds of foreign corporations, foreign governments, domestic corporations, and of a domestic municipality, the paper evidences of which were located in New York City. Said securities were deposited in part with decedent's son and in part with Lawrence Turnure & Company for the sale purpose of having the income collected and deposited to the credit of the decedent.

Held, that, with respect to said intangibles, the common-law maxim mobilia sequuntur personam applies, and that said securities may not, under section 303 (b) of the 1924 revenue act, be included in determining the value of that part of the decedent's gross estate which at the time of his death was situated in the United States.

James L. Dohr, Esq., for the petitioners.

Frank T. Horner, Esq., for the respondent.

This is a proceeding for the redetermination of a deficiency in estate tax in the amount of $24,865.88, asserted against the petitioners as executors of the estate of Ernest Augustus Brooks, who died on October 31, 1924. The issues are:

(1) Whether or not in determining the value of the net estate, which is the basis for computing the tax, the value of the following property of the decedent, who was a nonresident alien not engaged in business in the United States at the time of his death, should be included in determining the value of that part of his gross estate which at the time of his death was situated in the United States, namely, (a) shares of stock in a foreign corporation, (b) bonds of foreign corporations, (c) bonds of foreign governments, (d) bonds of domestic corporations, and (e) bonds of a domestic municipality, the paper evidences of such securities being located within the United States at the time of the decedent's death; and

(2) Whether or not the amount of $14,517.98, deposited by or for the decedent with the firm of Lawrence Turnure & Company, New York, N. Y., constituted "moneys deposited with any person carrying on the banking business, by or for a nonresident decedent who was not engaged in business in the United States at the time of his death."

8 *Findings of fact*

The petitioners are the duly appointed and qualified executors of the estate of Ernest Augustus Brooks, deceased, with an office at 52 Broadway, New York, N. Y.

The decedent died on October 31, 1924, and at the time of his death was a citizen of the Kingdom of Great Britain and a resident of the Republic of Cuba. At the time of his death the decedent was not engaged in business in the United States.

At the time of his death the decedent owned securities, which were in New York City, U. S. A., as follows:

(a) Bonds of foreign corporations and accrued interest thereon in the amount of	$24,384.97
(b) Bonds of foreign governments and accrued interest thereon in the amount of	55,610.49
(c) Bonds of domestic corporations and accrued interest thereon in the amount of	460,315.32
(d) Bonds of a domestic municipality and accrued interest thereon in the amount of	15,073.57
(e) Stock in a foreign corporation in the amount of	50,000.00

At the time of his death the decedent also had cash on deposit with Lawrence Turnure & Company, New York City, in the amount of $14,517.98.

The bonds of foreign corporations and accrued interest thereon, aggregating a value of $24,384.97, were as follows:

(1) $20,000 Canadian National Ry. Co. 30-yr. 4½% coupon gold bonds, due 1954	$19,150.00	
Accrued interest thereon		114.36
(2) $5,000 Canada Southern Ry. Co. 1st consolidated mortgage guar. 5% bonds, due 1963	5,100.00	
Accrued interest thereon		20.61
Total		24,384.97

The bonds of foreign governments and accrued interest thereon, aggregating a value of $55,610.49, were as follows:

(3) $3,000 Dominican Republic Customs Adm. sinking fund 5% coupon bonds of 1958	$3,030.00	
Accrued interest thereon		37.91
(4) $4,000 Kingdom of Belgium 26-yr. external sinking fund 7½% coupon bonds, due 1945	4,390.00	
Accrued interest thereon		124.59
(5) $3,000 Kingdom of Sweden 20-yr. 6% external coupon bonds of 1939	3,131.25	
Accrued interest thereon		67.87
(6) $10,000 Kingdom of Norway 20-yr. 6% external coupon bonds, due 1944	9,850.00	
Accrued interest thereon		148.37

(7) $7,000 Swiss Confederation 20-yr. sinking fund 8% bonds, due 1940	$8,032.50
Accrued interest thereon	185.66
(8) $5,000 French Government 20-yr. external sinking fund 8% bonds, due 1945	4,237.50
Accrued interest thereon	50.83
(9) $7,000 Kingdom of Norway external sinking fund 8% bonds due 1940	7,866.25
Accrued interest thereon	46.16
(10) $7,000 Kingdom of Denmark external sinking fund & refunding 8% bonds, due 1945	7,743.75
Accrued interest thereon	24.62
9 (11) $5,000 Kingdom of Belgium 25-yr. external sinking fund 7½% bonds, due 1945	5,487.50
Accrued interest thereon	155.73
Total	55,610.49

The bonds of domestic corporations and accrued interest thereon, aggregating a value of $460,315.32, were as follows:

(12) $50,000 Michigan Central R. R. Co. (Air Line) 1st mtge. 4% coupon bonds, due 1940	$45,000.00
Accrued interest thereon	693.04
(13) $5,000 Tennessee Coal & Iron and R. R. Co. gen. mtge. 5% coupon bonds, due 1925	5,087.50
Accrued interest thereon	82.88
(14) $25,000 Illinois Central R. R. Co. 1st mtge. 4% coupon gold bond, due 1951	23,093.75
Accrued interest thereon	331.54
(15) $25,000 Union Pacific R. R. Co. 1st mtge. 4% coupon bonds, due 1947	23,125.00
Accrued interest thereon	331.54
(16) $20,000 Chesapeake & Ohio Ry. Co. 1st cons. mtge. 4% coupon bonds, due 1989	16,925.00
Accrued interest thereon	265.22
(17) $25,000 Chicago, Rock Island & Pacific Ry. Co. gen. mtge. coupon 4% bonds, 1988	20,812.50
Accrued interest thereon	331.54
(18) $10,000 Erie Railroad Co. 1st cons. gen. prior lien 4% coupon bonds, due 1996	7,050.00
Accrued interest thereon	132.61
(19) $5,400 Reading Company gen. & ref. mtge. series "A" 4½% coupon bonds, due 1997	5,076.00
Accrued interest thereon	80.56
(20) $2,700 Philadelphia & Reading Coal & Iron Company 5% coupon rfdg. mortgage bonds, due 1973	2,733.75
Accrued interest thereon	41.43
(21) $35,000 Northern Pacific R. R. Co. prior lien 4% coupon bonds, due 1997	31,018.75
Accrued interest thereon	114.13
(22) $25,000 Pacific R. R. of Missouri 1st external mtge. 4% coupon bonds, due 1938	22,562.50
Accrued interest thereon	247.28
(23) $25,000 Central Pacific Railway Co. 1st & ref. mtge. 4% coupon bonds, due 1949	21,937.50
Accrued interest thereon	247.28
(24) $5,000 New York Central & Hudson River R. R. Co. 3½% coupon bonds, due 1998	3,850.00
Accrued interest thereon	43.27
(25) $25,000 Atlantic Coast Line R. R. Co. 1st cons. mtge. 4% coupon bonds, due 1952	22,875.00
Accrued interest thereon	165.75
(26) $49,000 New York, Chicago & St. Louis R. R. Co. 1st mtge. 4% coupon bonds, due 1927	45,325.00
Accrued interest thereon	161.54

(27) $25,000 Atchison, Topeka & Santa Fe gen. mtge. 4% coupon bonds, due 1995	$22,562.50
Accrued interest thereon	82.42
(28) $25,000 St. Louis, Iron Mountain & Southern R. R. Co. gen. consol. mtge. 4% coupon bonds, due 1931	25,031.25
Accrued interest thereon	103.63
(29) $5,000 Baltimore & Ohio 1st mtge. 4% coupon bonds, due 1948	4,400.00
Accrued interest thereon	16.48
(30) $3,000 Peoria & Eastern Ry. Co. 1st cons. mtge. 4% coupon bonds, due 1940	2,373.75
Accrued interest thereon	9.89
10 (31) $10,000 American Smelting & Refining Co. 1st mtge. series "A" 5% coupon bonds, due 1947	9,625.00
Accrued interest thereon	41.20
(32) $25,000 Norfolk & Western R. R. 1st cons. mtge. 4% coupon bonds, due 1996	22,406.25
Accrued interest thereon	82.42
(33) $10,000 Chicago & Northwestern R. R. Co. gen. mtge. 3½% coupon bonds, due 1987	7,500.00
Accrued interest thereon	174.04
(34) $400 Evansville, Indianapolis & Terre Haute R. R. Co. coupon 1st mtge. 7% bonds, due 1950	405.00
Accrued interest thereon	13.92
(35) $24,000 Lake Shore & Michigan Southern R. R. Co. 3½% coupon bonds, due 1997	18,900.00
Accrued interest thereon	348.85
(36) $5,000 Oregon-Washington Railroad & Navigation Company cons. mtge. 4% coupon bonds, due 1946	4,400.00
Accrued interest thereon	83.05
(37) $300 Cleveland, Cincinnati, Chicago & St. Louis R. R. Co. ref. & imp. 6% coupon bonds, due 1941	315.00
Accrued interest thereon	5.97
(38) $5,000 Missouri-Kansas-Texas R. R. Co. prior lien mtge. series "B" 4% coupon bonds, due 1962	3,575.00
Accrued interest thereon	66.30
(39) $5,000 Missouri-Kansas-Texas R. R. Co. prior lien mtge. series "A" 5% coupon bonds, due 1962	4,337.50
Accrued interest thereon	82.88
(40) $1,333.50 Reading Company gen. & ref. mtge. series "A" 4½% coupon bonds, due 1997	1,253.49
Accrued interest thereon	19.99
(41) $666.67 Philadelphia & Reading Coal & Iron Co. ref. 5% bonds, due 1973	675.20
Accrued interest thereon	11.05
(42) $5,000 Interborough Rapid Transit Company 5% 1st ref. bonds, due 1966	3,331.25
Accrued interest thereon	82.88
(43) $3,000 Southern R. R. Co. 1st cons. gen. mtge. 5% bonds, due 1994	3,030.00
Accrued interest thereon	49.73
(44) $3,000 Great Northern Ry. Co. 1st & ref. mtge. series "A" 4½% bonds, due 1961	2,737.50
Accrued interest thereon	42.28
(45) $4,000 Baltimore & Ohio 1st mtge, 50-year 4% bonds, due 1948	3,520.00
Accrued interest thereon	13.18
(46) $4,000 New York Chicago & St. Louis 1st mtge. 4% bonds, due 1937	3,700.00
Accrued interest thereon	13.18
(47) $5,000 South & North Alabama R. R. Co. gen. cons. 50-yr. 5% bonds, due 1966	5,225.00
Accrued interest thereon	20.61
(48) $2,000 Indiana Steel Corporation 1st mtge. 5% bonds, due 1952	2,055.00
Accrued interest thereon	49.73

(49) $3,000 Cleveland Short Line R. R. Co. 1st guar. mtg. 4½% bonds, due 1961	$2,868.75
Accrued interest thereon	11.13
(50) $5,000 Oregon Short Line R. R. Co. guar. ref. mtg. 4% bonds, due 1929	4,868.75
Accrued interest thereon	83.06
Total	460,315.32

11 The bonds of domestic municipality and accrued interest thereon, aggregated a value of $15,073.57, were as follows:

(51) $15,000 city of New York registered 4% corporate stock of 1956	$14,775.00
Accrued interest thereon	298.57
Total	15,073.57

The shares of capital stock in a foreign corporation aggregating a value of $50,000, consisted of—

(52) 666 shares of capital stock of the Central Romelie S. A. Cuba Joint Stock Company of Guantanamo, Cuba, a corporation organized under the laws of the Republic of Cuba	$50,000.00

Of the foregoing securities, there were in the possession of the decedent's son, Ernest Brooks, in New York City, at the time of the decedent's death, the items numbered as follows: 2, 7, 8, 9, 10, 11, 40–43, 44, 45–47, 48, 49, 50, 52. These securities were not pledged and were not held as security for any indebtedness. The said son of the decedent had possession of the securities, consisting of a stock certificate and bonds, for the purpose of collecting the income therefrom and depositing same to the credit of his father in a New York bank.

The remainder of the securities above described, consisting of the following items, were in the possession of Lawrence Turnure & Company, in New York City: 1, 3, 4, 5, 6, 12–23, 24–32, 33–36, 37–39, 51. Said securities were not pledged to nor hypothecated with said company and were not held has security for any indebtedness. Said company collected the income from the securities of the decedent so in its possession and placed same to the decedent's credit in a drawing account, against which the decedent from time to time drew checks. Said company made a charge for the services rendered in this connection.

The foregoing securities, at the values stated, were included by the respondent in determining the value of that part of the gross estate of the decedent which at the time of his death was situated in the United States.

The balance of $14,517.98, which the decedent at the time of his death had on deposit with Lawrence Turnure & Company, in New York City, was included by the respondent in the gross estate of the decedent.

Opinion

TRAMMELL: The first issue for consideration in this proceeding is whether or not the value of intangible personal property of a nonresident alien decedent, comprising stock in a foreign corporation and bonds of foreign governments, foreign corporations, domestic corporations, and of a domestic municipality, should, for the purpose of the Federal estate tax be included under the facts of this case as a part of the decedent's gross estate, which at the time of his death was "*situated in the United States.*"

The decedent died on October 31, 1924, a resident of Cuba and a citizen of Great Britain. At the time of death he was possessed of the securities described in detail in our findings of fact and 12 referred to above. The decedent was not engaged in business in the United States, and while the stock certificates and bonds in question were located in New York City, they were not hypothecated or pledged as security for any indebtedness. The securities were not a part of any business localized in the United States.

The pertinent provisions of the revenue act of 1924 applicable to this proceeding are as follows:

"SEC. 301. (a) In lieu of the tax imposed by Title IV of the revenue act of 1921, a tax equal to the sum of the following percentages of the value of the net estate (determined as provided in section 303) is hereby imposed upon the transfer of the net estate of every decedent dying after the enactment of this act, whether a resident or nonresident of the United States: * * *

"SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

"(a) To the extent of the interest therein of the decedent at the time of his death which after his death is subject to the payment of the charges against his estate and the expenses of its administration and is subject to distribution as part of his estate: * * *

"SEC. 303. For the purpose of the tax the value of the net estate shall be determined—

* * * * * * *

"(b) In the case of a nonresident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States"—

(Specified deductions omitted as not material here.)

* * * * * * *

"(d) For the purpose of Part I of this title, stock in a domestic corporation owned and held by a nonresident decedent shall be deemed property within the United States."

The revenue act of 1924, which was enacted June 2, 1924, prior to the death of the decedent, in section 301 (a), supra, imposes a tax upon the transfer of the net estate of every decedent dying after the enactment of said act, whether a resident or nonresident of the

United States, and in section 302 provides that the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, with certain limitations not here material. Subdivision (a) of section 303 provides the method of determining the value of the net estate in the case of a resident with which we are not here concerned. And subdivision (b) of said section provides that in the case of a nonresident the value of the net estate of the decedent shall be determined by making certain specified deductions "from the value of that part of his gross estate which at the time of his death is situated in the United States."

It is clear that section 303 (b) is a direct limitation upon the provisions of section 302 in so far as section 302 is applicable to the estate of a nonresident decedent, and since the tax is in all cases computed upon the value of the net estate, and since in the case of a nonresident decedent the net estate must be determined upon the basis of that part of the gross estate which is situated in the United States at the time of the decedent's death, the first issue in this
13 proceeding resolves itself into the question whether the securities owned by this decedent may, under the circumstances indicated, be considered for the purpose of the estate tax as property "situated in the United States" at the time of his death.

The issue here presented does not involve any question of the power of Congress to impose a transfer or estate tax measured by the value of property of the kinds owned by this defendant, but the question is rather whether Congress has in fact done so. Congress has clearly indicated its intention that the tax shall be determined, in the case of a nonresident decedent, only on the basis of "the value of that part of his gross estate which at the time of his death is situated in the United States." We shall, therefore, restrict our consideration of the issue to the question whether the decedent's securities were property which, at the time of his death, was "situated in the United States."

The respondent has included the value of the decedent's securities as a part of his gross estate because of the fact that the stock certificates and bonds were located in New York City at the date of his death. This position of the respondent rests upon the theory that the stock certificates were something more than mere evidences of the decedent's ownership of an interest in the corporations, and that the bonds were likewise something more than mere evidences of debt; in effect, that the property rights themselves were inseparable from and were constituted by the documents, and had a situs where the documents were located. If this view is sound, as contended by the respondent, it would follow that since the instruments were located in New York City, the securities were property "situated in the United States."

This doctrine has been the subject of judicial consideration in numerous cases, and there is marked conflict in the reported decisions. The principle has been accepted by some courts and rejected

by others. The Supreme Court of the United States, in its early decisions, took a contrary view; later the principle was approved and still later rejected.

In Blackstone v. Miller, 188 U. S. 189 (January, 1903), the court said:

"Bonds and negotiable instruments are more than merely evidences of debt. The debt is inseparable from the paper which declarse and constitutes it, by a tradition which comes down from more archaic conditions."

In De Ganay v. Lederer, 250 U. S. 376 (June, 1919), the court cited with approval its former decision in Blackstone v. Miller, and said:

"To the general understanding and with the common meaning usually attached to such descriptive terms, bonds, mortgages, and certificates of stock are regarded as property. By State and Federal statutes they are often treated as property, not as mere evidences of the interest which they represent."

The Court of Appeals of New York, in People ex rel. Jefferson v. Smith, 88 N. Y. 576 (cited with approval and quoted by the Supreme Court in the De Ganay case), treated instruments of the kind here involved as tangible property, saying:

"It is clear from the statutes referred to and the authorities cited and from the understanding of business men in commercial transactions, as well as of jurists and legislators, that mortgages,
14 bonds, bills and notes have for many purposes come to be regarded as property and not as the mere evidences of debts, and that they may thus have a situs at the place where they are found like other visible, tangible chattels."

The opposite view, that the exclusive situs of the property in debts is the domicile of the creditors, irrespective of the location of the bonds or paper evidences, was adopted by the Supreme Court in Railroad Company v. Pennsylvania, reported under the title "State Tax on Foreign-Held Bonds," 15 Wall. 300, decided in 1872. In that case the court in its opinion said (p. 320):

"All the property there can be in the nature of things in debts of corporations, belongs to the creditors, to whom they are payable, and follows their domicile, wherever that may be. Their debts can have no locality separate from the parties to whom they are due. This principle might be stated in many different ways, and supported by citations from numerous adjudications, but no number of authorities, and no forms of expression could add anything to its obvious truth, which is recognized upon its simple statement."

Substantially the same views were expressed by the court in Kirtland v. Hotchkiss, 100 U. S. 491 (October, 1879), wherein the court cited with approval State Tax on Foreign-Held Bonds, supra, and said:

"That debt, although a species of intangible property, may, for purposes of taxation, if not for all others, be regarded as situated at the domicile of the creditor. It is none the less property because

its amount and maturity are set forth in a bond. That bond, wherever actually held or deposited, is only evidence of the debt, and if destroyed, the debt—the right to demand payment of the money loaned, with the stipulated interest—remains. Nor is the debt for purposes of taxation, affected by the fact that it is secured by mortgage upon real estate situated in Illinois. The mortgage is but a security for the debt * * *."

The view that intangibles, such as debts evidenced by bonds or otherwise, have an exclusive situs for the purpose of taxation at the domicile of the creditor or owner, as expressed in State Tax on Foreign-Held Bonds, supra (1872), and in Kirtland v. Hotchkiss, supra (1879), was plainly departed from by the court in the later case of Blackstone v. Miller, supra (1903), where the court upheld the right of the State of New York to levy a tax on the transfer by will of certain debts due from residents of New York to the decedent Blackstone, who died domiciled in Illinois. The State of New York had by legislative act created a situs for such property not where the paper evidences of the debt were located or where the creditors were domiciled, but at the place where the debtors were domiciled. The court sustained the tax without regard to the fact that another State might have had the right to tax at the place the property was situated or where the creditor was domiciled, and this opinion of the court for the first time lent support to the doctrine that intangible property had a situs where the paper evidences thereof were located.

Blackstone v. Miller was cited and followed by the court in approving opinions as late as June, 1929 (see De Ganay v. Lederer, supra). However, the doctrine that intangibles may have a taxable situs apart from the domicile of the owner because of the presence of the paper evidences was definitely abandoned and the decision in the Blackstone case overruled in Farmer's Loan and Trust Co. v. Minnesota, 280 U. S. 204 (January, 1930), where the court said:

"Blackstone v. Miller, supra, and certain approving opinions lend support to the doctrine that ordinary choses in action are subject to taxation both at the debtor's domicile and at the domicile of the creditor; that two States may tax on different and more or less inconsistent principles the same testamentary transfer of such property without conflict with the fourteenth amendment * * *. Having considered the supporting arguments in the light of our more recent opinions, we are compelled to declare it untenable. Blackstone v. Miller, no longer can be regarded as a correct exposition of existing law; and to prevent misunderstanding it is definitely overruled."

The specific question whether the mere presence of the paper evidences of debts constitutes a tax situs of the property at the place where such paper evidences are found was considered by the court in Buck v. Beach, 206 U. S. 392. In that case, the State of Indiana

sought to tax certain notes which were given and were payable in the State of Ohio, by residents of Ohio to a nonresident of Indiana, solely because the notes or paper evidences of the debts were present in Indiana. The court held that the notes did not constitute property located in the State of Indiana and accordingly was not taxable by that State, saying:

"If the facts in this case constituted the debts evidenced by the Ohio notes property in the jurisdiction of the State of Indiana at the time when such taxes were imposed, then the tax is valid * * *.

"The sole question then for this court is whether the mere presence of the notes in Indiana constituted the debts of which the notes were the written evidence, property within the jurisdiction of that State, so that such debts could be therein taxed.

* * * * * * *

"We can not assent to the doctrine that the mere presence of evidences of debt, such as these notes, under the circumstances already stated, amounts to the presence of property within the State for taxation."

In Blodgett v. Silberman, 277 U. S. 1, 9, 14 (October, 1927), the court approved the maxim "mobilia sequuntur personam" and applied the principle that the location of the paper evidences of intangibles was not material in determining the taxable situs of such property. It was held in that case that the State of the decedent's domicile might impose a succession tax on the transfer of his intangible property by will or inheritance, even though the evidences of such property were outside of the State at the time of his death. In that connection the court said:

"At common law the maxim 'mobilia sequuntur personam' applied. There has been discussion and criticism of the application and enforcement of that maxim, but it is so fixed in the common law of this country and of England, in so far as it relates to intangible property, including choses in action, without regard to whether they are evidenced in writing or otherwise and whether the papers evidencing the same are found in the State of the domicile or elsewhere, and it is so fully sustained by cases in this
16 and other courts, that it must be treated as settled in this jurisdiction whether it approve itself to legal philosophic test or not.

* * * * * * *

"The question here is whether bonds, unlike other choses in action, may have a situs different from the owner's domicil such as will render this transfer taxable in the State of that situs and in only that State. We think that bonds are not thus distinguishable from other choses in action. It is not enough to show that the written or printed evidence of ownership may, by the law of the State in which they are physically present, be permitted to be taken in execution or dealt with as reaching that of which they are evidence, even without the presence of the owner. While bonds are so

treated, they are, nevertheless, in their essence only evidences of debt. The Supreme Court of Errors expressly admits that they are choses in action. Whatever incidental qualities may be added by usage of business or by statutory provision, this characteristic remains and shows itself by the fact that their destruction physically will not destroy the debt which they represent. They are representative and not the thing itself."

It appears now to be settled beyond controversy in the Federal jurisdiction that intangibles, except where they have become part of a localized business in another jurisdiction, have an exclusive situs for the purpose of taxation at the domicile of the owner, without regard to where the paper evidences of such property may be found, and this is the present rule not only with respect to excise or transfer taxes, but also with respect to direct property taxes. Buck v. Beach, supra.

The doctrine presently approved by the Supreme Court, at least in so far as it involves the taxing power of the States under the Fourteenth Amendment, is clearly stated in Farmers' Loan and Trust Co. v. Minnesota, supra (decided January, 1930), as follows:

"While debts have no actual territorial situs we have ruled that a State may properly apply the rule mobilia sequuntur personam and treat them as localized at the creditor's domicile for taxation purposes. Tangibles with permanent situs therein, and their testamentary transfer, may be taxed only by the State where they are found. And, we think, the general reasons declared sufficient to inhibit taxation of them by two States apply under present circumstances with no less force to intangibles with taxable situs imposed by due application of the legal fiction.

* * * * * * *

"Taxation is an intensely practical matter and laws in respect of it should be construed and applied with a view of avoiding, so far as possible, unjust and oppressive consequences. We have determined that in general intangibles may be properly taxed at the domicile of their owner and we can find no sufficient reason for saying that they are not entitled to enjoy an immunity against taxation at more than one place similar to that accorded to tangibles. The difference between the two things, although obvious enough, seems insufficient to justify the harsh and oppressive discrimination against intangibles contended for on behalf of Minnesota."

The views of the Supreme Court are further stated and amplified in its latest decision on this question in Baldwin v. Missouri,
17 281 U. S. 586 (decided May 26, 1930), wherein the court cited with approval and quoted from State Tax on Foreign Held Bonds, supra, Kirtland v. Hotchkiss, supra, Blodgett v. Silberman, supra, and Farmers' Loan and Trust Co. v. Minnesota, supra. In the Baldwin case the State of Missouri had levied an inheritance tax measured by the value of certain intangible property in the form of deposits in Missouri banks, United States bonds, and promissory

notes most of which were executed by citizens of Missouri and secured by liens upon lands lying therein, but all of which intangibles were evidenced by documents located in Missouri, while the owner decedent was a resident of Illinois. The court held that the property was not situated within the jurisdiction of Missouri, and that said State did not have the power to tax its transfer. In its opinion, the court said:

"The challenged judgment rests upon the broad theory that a State may lay succession or inheritance taxes measured by the value of any deposits in local banks passing from a nonresident decedent; also upon the value of bonds issued by the United States and promissory notes executed by individual citizens of the State, when devised by such nonresident, if these bonds or notes happen to be found within the confines of the State when death occurs. The cause was decided below prior to our determination of Farmers' Loan and Trust Co. v. Minnesota, 280 U. S. 204. Blackstone v. Miller, 188 U. S. 189, was cited in support of the conclusion reached. Considering Farmers' Loan and Trust Co. v. Minnesota, and previous opinions there referred to, the theory upon which the court below proceeded is untenable and its judgment must be reversed.

"Ordinarily, bank deposits are mere credits and for purposes of ad valorem taxation have situs at the domicile of the creditor only. The same general rule applies to negotiable bonds and notes, whether secured by liens or real estate or otherwise.

* * * * * * *

"We find nothing to exempt the effort to tax the transfer of the deposits in Missouri banks from the principle applied in Farmers' Loan & Trust Co. v. Minnesota, supra. So far as disclosed by the record, the situs of the credit was in Illinois where the depositor had her domicile. There the property interest in the credit passed under her will; and there the transfer was actually taxed. This passing was properly taxable at that place and not otherwise.

"The bonds and notes, although physically within Missouri, under our former opinions were choses in action with situs at the domicile of the creditor. At that point they, too, passed from the dead to the living, and there this transfer was actually taxed. As they were not within Missouri for taxation purposes the transfer was not subject to her power. Rhode Island Trust Co. v. Doughton, 270 U. S. 69."

At least so far as concerns the power of the States to tax without conflict with the fourteenth amendment, the foregoing decisions of the Supreme Court appear definitely and unmistakably to establish two principles, namely, first the general principle that intangibles, such as we have here, follow the person and have a situs for the purposes of taxation only at the domicile of the owner; and, second, the specific principle that the mere presence of the instruments or paper evidences does not establish a taxable situs at the place
18 where they are found in respect of the property rights which they represent. And, as we have shown, these principles are

applied alike in the case of State excise or transfer taxes and in the case of direct property taxes.

Should a different rule be applied in the case of Federal taxation involving a nonresident alien decedent? Can intangible property consistently be said to have a certain situs for the purposes of State taxation and another and different situs for the purposes of Federal taxation? No such distinction is indicated by the decisions of the Supreme Court. The statute here involved did not undertake to create any situs for the property, other than at the place where "situated." If it were situated at the domicile of the owner it was not "situated in the United States." We can rely upon the court decisions setting forth what is meant by "situated" and where intangible property is situated. It is clear that the fourteenth amendment to the Constitution has no effect whatever in so far as the question now before us is concerned, but we are concerned with the rule laid down by the Supreme Court as to the situs of intangible property. Its situs is the foundation of the tax by the States under the fourteenth amendment decisions. In deciding those cases the court was called upon to decide where the property was situated. If the situs follows the domicile of the owner and is situated as that place that principle affects the decision of the case before us.

De Ganay v. Lederer, supra, parallels in many respects the case now before us, the principal difference being that that case involved a Federal income tax and the present case involves a Federal estate tax. Each case arose under a Federal taxing statute, and in nowise involves the power of the several States to tax under the fourteenth amendment. Each case concerns intangible property, namely, corporate securities owned by a nonresident alien, the certificates or paper evidences of which were located in the United States; and the question in each case, in the last analysis, is whether such intangibles, for the purpose of Federal taxation, constitute property owned or situated in the United States.

In the De Ganay case the court cited with approval and quoted Blackstone v. Miller, supra, and to the extent it lends support to the doctrine that bonds and negotiable instruments are more than merely evidences of debt and give to the property rights themselves a tax situs where the instruments are found, this decision must be regarded as one of the "approving opinions" overruled in Farmers' Loan & Trust Co. v. Minnesota, supra. It should be noted, however, that the conclusion reached in the De Ganay case rests in large part aside from the principle above set out, on the proposition that the securities in question had acquired a business situs in Pennsylvania, and accordingly held the income was from sources within the United States, which situation is not presented in the instant case. In any event, the point in the De Ganay case which is of particular importance here is the fact that, in deciding the question of the situs of intangibles for the purposes of Federal taxation, the court made no attempt to distinguish its prior decisions involving the power of the States to tax such property under the fourteenth amendment, but on

the contrary adopted the same reasoning, the same doctrine, the same principles as were applied in the State cases under the fourteenth amendment.

19 In the case of Turner, Executor, v. McCuen, decided by the United States District Court for the District of Vermont August 30, 1930, the collector had collected an estate tax on money deposited by a resident of Canada in a bank in Vermont. The court discussed only the question as to whether the decedent was "engaged in business in the United States." Apparently the court did not consider it worth while even to discuss the question whether otherwise the property might have been considered situated in the United States, but decided that the estate tax paid should be refunded. However, if bank deposits in the United States of a nonresident decedent be held to be property situated in the United States, the decision of the court was erroneous. While the court did not refer to the Baldwin case and the Minnesota case, supra, the decision is in accord with the reasoning of those cases. The doctrine of those two cases was reaffirmed by the Supreme Court as late as November 24, 1930, in the case of Beidler v. South Carolina Tax Commission (not yet reported), in so far as indebtedness was concerned. In that case the court had no occasion to decide the question as it related to corporate stocks. They were taxed in South Carolina, where the corporations were organized, and this question was not presented to the court. It seems clear that the language of prior decisions is broad enough to include the stocks of foreign corporations here involved. Corporate stocks were included in the De Ganay case, supra, and were classified by the Supreme Court in the same way as notes and bonds. In the case of Rhode Island Hospital Trust Co. v. Doughton, 270 U. S. 69 (1926), the Supreme Court said: "In the matter of intangibles, like choses in action, shares of stock, and bonds, the situs of which is with the owner, a transfer tax, of course, may be properly levied by the State of which he resides * * *." The court held that North Carolina could not tax the transfer of the stock in a New Jersey corporation doing business in North Carolina, where two-thirds of the property was located. Shares of stock were involved in the Silberman case, supra, where the court applied the same rule as in the case of bonds.

The respondent cites the case of United States v. Bennett, 232 U. S. 299, as authority for the proposition that the rules of taxation applicable to the States have no application to the Federal Government. That case, however, held that the Federal Government had the constitutional right to tax its citizens on account of the use of foreign-built yachts, even though the property during the taxable period had its situs beyond the territorial limits of the United States, the basis of the decision being the relation of the United States to its citizens and their relation to it. The case at bar is wholly different. It involves the inclusion for estate-tax purposes of property of a nonresident alien. There is no analogy between the Bennett case and

the case before us. But in any event we are not concerned with the power of Congress to impose a tax, but only with the construction of the statute, that is, whether the statute which imposes an estate tax upon the property of a nonresident decedent intended to include therein certain property. We construe the statute as not imposing such a tax by the language used. Only property situated in the United States was included. And the Supreme Court has settled the question that intangible property is situated at the domicile of the owner, which in this case was not in the United States.

20 Conceding for the sake of argument that the Congress had the power to subject the transfer of the property here involved to the estate tax the question here is, Has it exercised that power by levying a tax measured by the value of intangible property situated in the United States belonging to a nonresident decedent? Under the Supreme Court decisions the property involved here was not "situated in the United States," but had its situs at the domicile of the owner.

In construing statutes levying taxes, it is the established rule not to extend their provisions by implications beyond the clear import of the language used, or enlarge their operations to embrace matters not specifically pointed out, and in case of doubt, they are construed most strongly against the Government. Gould v. Gould, 245 U. S. 151.

Certainly the statute applicable here does not in express language levy the tax upon nor measure the tax in the case of a nonresident decedent by the value of any property which is not "situated within the United States." Since the Supreme Court has now settled the law that the situs of stocks and bonds is at the domicile of the owner, then in the case of a nonresident decedent the statute does not lay a burden upon or measure it by the value of such property as is here involved.

The statute, in section 303 (d), expressly provides that stock in a domestic corporation owned and held by a nonresident decedent shall be deemed property within the United States. However, no such provision is made as to bonds of domestic corporations or stocks in foreign corporations. The express inclusion of the class of securities implies that others are not to be so treated. The rule expressio unius est exclusio alterius seems aptly to apply here. This indicates that Congress had in mind in the statute before us different recognized rules as to the situs for taxation purposes of intangible property, but, except in the case of stock in a domestic corporation, it has provided only that such property "situated in the United States" shall be included in the gross estate. The intangible property in question here follows the domicile of the owner, and is therefore not property "situated in the United States."

If Congress had desired or intended to include, for purposes of the estate tax, intangible property of nonresidents of the kinds here in controversy, a provision evidencing such intention could very easily have been incorporated in the statute, as was done with respect

to stock in domestic corporations. Certainly, to give such property a taxable situs in the United States, the statute must in any event expressly so provide. However, only in the specific case of stock in a domestic corporation has Congress undertaken by the statute to create any other situs for intangible property than that established by the rule of law as set out in the judicial decisions, that is, the domicile of the owner.

In the various State statutes involved in the cases before the Supreme Court, the States expressly sought to tax intangible property at places other than the domicile of the owner, it being conceded that the State of the domicile had the right to tax. But the statute before us does not expressly make provision for taxation except as to property "situated in the United States." That the property involved here was situated at the domicile of the decedent in
21 Cuba seems clear from the decisions. The foregoing discussion with respect to other intangibles is applicable to the money on deposit with Laurence Turnure & Co., regardless of whether it was engaged in the banking business. Whether it was so engaged or not, the money which it had credited to and placed on deposit for the decedent, like the other intangibles was not situated in the United States. Baldwin v. Missouri, supra.

Reviewed by the board.

Judgment will be entered under rule 50.

Before United States Board of Tax Appeals, Washington.

ERNEST BROOKS, HAROLD WILSON BROOKS, AND WALTER DOUGLAS BROOKS, as Executors of the Estate of Ernest Augustus Brooks, petitioners

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket No. 32401

Decision

Pursuant to findings of fact and opinion promulgated February 5, 1931, the respondent herein to wit, on March 3, 1931, having filed a proposed redetermination in estate tax, and the petitioner on March 7, 1931, having filed notice of acquiescence to the said proposed redetermination, it is

Ordered and decided that there is a deficiency in estate tax in the amount of $1.79.

Enter March 11, 1931.

(Signed) LOGAN MORRIS,
Member.

A true copy.
Tetse:

[SEAL.] B. D. GAMBLE,
Clerk U. S. Board of Tax Appeals.

In United States Circuit Court of Appeals for the Second Circuit

(Indorsed:) United States Board of Tax Appeals. Filed Sept. 5, 1931.

DAVID BURNET, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

ERNEST BROOKS, HAROLD WILSON BROOKS, AND WALTER DOUGLAS BROOKS, Executors of the Will of Ernest Augustus Brooks, respondents

Docket No. 32401

Petition for review and assignments of error

To the Honorable Judges of the United States Circuit Court of Appeals for the Second Circuit:

Now comes David Burnet, Commissioner of Internal Revenue, by his attorneys, G. A. Youngquist, Assistant Attorney General, C. M. Charest, general counsel, Bureau of Internal Revenue, and Frank T. Horner, special attorney, Bureau of Internal Revenue, and respectfully shows:

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I

That he is the duly appointed, qualified, and acting Commissioner of Internal Revenue, appointed and holding office by virtue of the laws of the United States; that Ernest Brooks, Harold Wilson Brooks, and Walter Douglas Brooks are individuals, residents of the State of New York, with an office at 52 Broadway, New York, N. Y., and are the executors of the will of Ernest Augustus Brooks, deceased, and that the return for the estate of the said Ernest Augustus Brooks was filed with the collector of internal revenue for the third district of New York, whose office is located at 250 West 57th St., New York, N. Y., which is within the jurisdiction of the United States Circuit Court of Appeals for the Second Judicial Circuit.

That the court in which the review of this proceeding is sought is the United States Circuit Court of Appeals for the Second Judicial Circuit.

II

The nature of the controversy is as follows, to wit:

Ernest Augustus Brooks died October 31, 1924, a subject of Great Britain and a resident of the Republic of Cuba. Thereafter, Ernest Brooks, Harold Wilson Brooks, and Walter Douglas Brooks, residents of New York, were, by the Surrogate's Court of New York County, New York, granted letters testamentary upon the estate

of Ernest Augustus Brooks, deceased, qualified, and now are the acting executors of the will of the said Ernest Augustus Brooks.

The decedent, at the time of his death, on October 31, 1924, was the owner, among other things, of the following described property, valued as indicated, and in the possession of his son, Ernest Brooks, a resident of Cedarhurst, Long Island, N. Y., and Lawrence Turnure & Company in New York City:

Securities of the estate of Ernest Augustus Brooks held by Ernest Brooks on October 31, 1924

Property	Value
Canada Southern Ry. Co. 1st cons. mtg. guar. 5% bonds	$5,100.00
Accrued interest thereon	20.61
Swiss Conf. 20-yr. sinking fund 8% bonds	8,032.50
Accrued interest thereon	185.66
French Gov. 20-yr. external sinking fund 8% bonds	4,237.50
Accrued interest thereon	50.83
Kingdom of Norway external sinking fund 8% bonds	7,866.25
Accrued interest thereon	46.16
Kingdom of Denmark external sinking fund & refunding 8% bonds	7,743.75
Accrued interest thereon	24.62
Kingdom of Belgium 25-yr. external sinking fund 7½% bonds	5,487.50
Accrued interest thereon	155.73
Reading Co. gen. & ref. mtg. series A 4½% coupon bonds	1,253.49
Accrued interest thereon	19.99
Phil. & Read. Coal & Iron Co. ref. 5% bonds	675.20
Accrued interest thereon	11.05
Interborough Rapid Transit Co. 5% 1st ref. bonds	3,331.25
Accrued interest thereon	82.88
Southern R. R. Co. 1st cons. gen. mtg. 5% bonds	3,030.00
Accrued interest thereon	49.73
23 Great Northern Ry. Co. 1st & ref. mtg. series A, 4½% bonds	$2,737.50
Accrued interest thereon	42.28
B. & O. 1st mtg. 50-yr. 4% bonds	3,520.00
Accrued interest thereon	13.18
N. Y., Chi. & St. Louis 1st mtg. 4% bonds	3,700.00
Accrued interest thereon	13.18
South & North Ala. R. R. Co. gen. cons. 50-yr. 5% bonds	5,225.00
Accrued interest thereon	20.61
Indiana Steel Corp. 1st mtg. 5% bonds	2,055.00
Accrued interest thereon	49.73
Cleveland Short Line R. R. Co. 1st guar. mtg. 4½% bonds	2,868.75
Accrued interest thereon	11.13
Oregon Short Line R. R. Co. guar. ref. mtg. 4% bonds	4,868.75
Accrued interest thereon	83.06
Capital stock of the Central Romelie S. A. Cuba Joint Stock Co., of Guantanamo, Cuba	50,000.00
	122,612.87

Property of the Estate of Ernest Augustus Brooks held by Lawrence Turnure & Company on October 31, 1924

Property	Value
Canadian Nat'l. Ry. Co. 30-yr. 4½% coupon gold bonds	$19,150.00
Accrued interest thereon	114.36
Dominican Republic Customs Adm. sinking fund 5% coupon bonds	3,030.00
Accrued interest thereon	37.91
Kingdom of Belgium 26-yr. external sink. fund 7½% coupon bonds	4,390.00
Accrued interest thereon	124.59
Kingdom of Sweden 20-yr. 6% external coupon bonds	3,131.25
Accrued interest thereon	67.87
Kingdom of Norway 20-yr. 6% external coupon bonds	9,850.00
Accrued interest thereon	148.37

Property	Value
Michigan Central R. R. Co. (Air Line) 1st mtg. 4% coupon bonds	$45,000.00
Accrued interest thereon	663.04
Tennessee Coal & Iron and R. R. Co. gen. mtg. 5% coupon bonds	5,087.50
Accrued interest thereon	82.88
Ill. Central R. R. Co. 1st mtg. 4% coupon gold bonds	23,093.75
Accrued interest thereon	331.54
Union Pacific R. R. Co. 1st mtg. 4% coupon bonds	23,125.00
Accrued interest thereon	331.54
Chesapeake & Ohio Ry. Co. 1st cons. mtg. 4% coupon bonds	16,925.00
Accrued interest thereon	265.22
Chi., Rock Island & Pac. Ry. Co. gen. mtg. coupon 4% bonds	20,812.50
Accrued interest thereon	331.54
Erie R. R. Co. 1st cons. gen. prior lien 4% coupon bonds	7,050.00
Accrued interest thereon	132.61
Read. Co. gen. & ref. mtg. series A, 4½% coupon bonds	5,076.00
Accrued interest thereon	80.56
Phil. & Read. Coal & Iron Co. 5% coupon rfdg. mtg. bonds	2,733.75
Accrued interest thereon	41.43
Northern Pac. R. R. Co. prior lien 4% coupon bonds	31,018.75
Accrued interest thereon	114.13
Pac. R. R. of Mo. 1st external mtg. 4% coupon bonds	22,562.50
Accrued interest thereon	247.28
Central Pac. Ry. Co. 1st & ref. mtg. 4% coupon bonds	21,937.50
Accrued interest thereon	247.28
N. Y. Central & Hudson River R. R. Co. 3½% coupon bonds	3,850.00
Accrued interest thereon	43.27
Atl. Coast Line R. R. Co. 1st cons. mtg. 4% coupon bonds	22,875.00
Accrued interest thereon	165.75
N. Y., Chi. & St. Louis R. R. Co. 1st mtg. 4% coupon bonds	45,325.00
Accrued interest thereon	161.54
Atchison, Topeka & Santa Fe gen. mtg. 4% coupon bonds	22,562.50
Accrued interest thereon	82.42
St. Louis Iron Mountain & So. R. R. Co. gen. cons. mtg. 4% coupon bonds	25,031.25
Accrued interest thereon	103.03
24 B. & O. R. R. 1st mtg. 4% coupon bonds	4,400.00
Accrued interest thereon	16.48
Peoria & Eastern Ry. Co. 1st cons. mtg. 4% coupon bonds	2,373.75
Accrued interest thereon	9.89
American Smelting & Ref. Co. 1st mtg. series A 5% coupon bonds	9,625.00
Accrued interest thereon	41.20
Norfolk & Western R. R. 1st cons. mtg. 4% coupon bonds	22,406.25
Accrued interest thereon	82.42
Chi. & Northwestern R. R. Co. gen. mtg. 3½ coupon bonds	7,500.00
Accrued interest thereon	174.04
Evansville, Indianapolis & Terre Haute R. R. Co. coupon 1st mtg. 7% bonds	405.00
Accrued interest thereon	13.92
Lake Shore & Michigan Southern R. R. Co. 3½% coupon bonds	18,900.00
Accrued interest thereon	348.85
Oregon-Washington R. R. & Navigation Co. cons. mtg. 4% coupon bonds	4,400.00
Accrued interest thereon	83.05
Cleveland, Cincinnati, Chicago & St. Louis R. R. Co. ref. & imp. 6% coupon bonds	315.00
Accrued interest thereon	5.97
Missouri-Kansas-Texas R. R. Co. prior lien mtg. series B 4% coupon bonds	3,575.00
Accrued interest thereon	66.30
Missouri-Kansas-Texas R. R. Co. prior lien mtg. series A 5% coupon bonds	4,337.50
Accrued interest thereon	82.88
City of New York registered 4% corp. stock of 1956	14,775.00
Accrued interest thereon	298.57
Cash	14,517.98
	496,289.46

The said property of the total value of $618,902.33 was not included by the said executors in their return which they filed for Federal estate tax purposes.

The Commissioner of Internal Revenue, under date of October 13, 1927, sent a notice to the executors aforesaid, by registered mail, proposing a deficiency in estate tax on the transfer of the net estate of the said Ernest Augustus Brooks, deceased, in the amount of $24,865.88.

In determining the deficiency the commissioner included in the gross estate, under the provisions of subdivision (a) of section 301, subdivision (a) of section 302, and subdivisions (b), (d), and (e) of section 303 of the revenue act of 1924, the value of the property aforesaid owned by the decedent on the date of his death, October 31, 1924.

On October 28, 1929, the aforesaid executors filed a petition with the United States Board of Tax Appeals for a redetermination of the estate tax deficiency above mentioned.

After the answer of the commissioner was duly filed, a hearing was held before said board on December 5, 1929. The opinion and interlocutory decision of the board was promulgated February 5, 1931, and the final order of the board, redetermining the deficiency, was entered on March 11, 1931, in which it was ordered and decided that there is a deficiency in the estate tax in the amount of $1.79.

The board, misapplying Farmers Loan & Trust Company v. Minnesota, 280 U. S. 204, and Baldwin v. Missouri, 281 U. S. 586, held that the property in question had its situs at the domicile of its owner, Cuba; that the said property was not "situated in the
25 United States," and, therefore, that the value of such property was not subject to be included in the gross estate for purposes of the Federal estate tax, under the provisions of subdivision (a) of section 301, subdivision (a) of section 302 and subdivisions (b), (d), and (e) of section 303 of the revenue act of 1924.

III

The said commissioner, being aggrieved by the conclusions of law contained in said decision, and by the said order of redetermination, desires to obtain a review thereof by the United States Circuit Court of Appeals for the Second Circuit.

The commissioner's assignments of error are as follows:

(1) The Board of Tax Appeals erred in holding and deciding that the commissioner erred in including in the gross estate for Federal estate tax purposes the value of the securities and cash in question, under subdivision (a) of section 301, subdivision (a) of section 302, and subdivisions (b), (d), and (e) of section 303 of the revenue act of 1924.

(2) The Board of Tax Appeals erred in failing and refusing to hold and decide that the value of the said securities and cash should

be included in the gross estate of the decedent for Federal estate tax purposes, under subdivision (a) of section 301, subdivision (a) of section 302, and subdivisions (b), (d), and (e) of section 303 of the revenue act of 1924.

(3) The Board of Tax Appeals erred in holding that the securities and cash in question had a situs at the domicile of their owner, in the Republic of Cuba, and not in the United States, within the meaning of subdivision (a) of section 301, subdivision (a) of section 302, and subdivisions (b), (d), and (e) of section 303 of the revenue act of 1924.

(4) The Board of Tax Appeals erred in failing and refusing to hold and decide that the said securities and cash had a situs in the United States, for Federal estate tax purposes, within the meaning of sections 301, 302, and 303 of the revenue act of 1924.

(5) The Board of Tax Appeals erred in entering its final order of redetermination that there is a deficiency in the estate tax on the transfer of the net estate of Ernest Augustus Brooks only in the amount of $1.79, instead of a deficiency in estate tax due from the respondents herein in the sum of such amount as would be determined by including in the decedent's gross estate the value of the securities and cash in question.

(6) The Board of Tax Appeals erred in failing and refusing to enter a final order of redetermination that there is due from the estate of the said Ernest Augustus Brooks a deficiency in the estate tax in such amount as would result from the inclusion in the decedent's gross estate of the value of the securities and cash in question.

Wherefore, the commissioner petitions that the decision of the Board of Tax Appeals be reviewed by the United States Circuit Board of Tax Appeals for the Second Circuit, that a transcript of the record be prepared in accordance with law and with the rules of said court and transmitted to the clerk of said court for filing,
26 and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said court.

(Sig.) G. A. YOUNGQUIST.
Assistant Attorney General.

(Sig.) C. M. CHAREST.
General Counsel, Bureau of Internal Revenue.

Of counsel:

(Sig.) FRANK T. HORNER.
Special Attorney, Bureau of Internal Revenue.

Duly sworn to by C. M. Charest, jurat ommitted in printing.

In United States Circuit Court of Appeals for the Second Circuit

(Indorsed:) United States Board of Tax Appeals. Filed Sept. 14, 1931.

[Title omitted.]

Notice of filing petition for review

To ERNEST BROOKS,
Executor, Estate of Ernest Augustus Brooks,
393 7th Avenue, New York, N. Y.

To HAROLD WILSON BROOKS,
Executor, Estate of Ernest Augustus Brooks,
52 Broadway, New York, N. Y.

To WALTER DOUGLAS BROOKS,
Executor, Estate of Ernest Augustus Brooks,
52 Broadway, New York, N. Y.

To JAMES L. DOHR,
Attorney at Law, 52 Broadway, New York, N. Y.

You and each of you are hereby notified that the Commissioner of Internal Revenue did, on the 5th day of September, 1931, file
27 with the clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Second Circuit, of the decision of the board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served up each of you.

Dated this 5th day of September, 1931.

(Signed) C. M. CHAREST,
General Counsel, Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of errors mentioned therein, is hereby acknowledged this 9th day of September, 1931.

(Sgd.) ERNEST BROOKS,
Respondent on Review.
(Sgd.) JAMES L. DOHR,
Attorney for Respondent on Review.

FTH/y 9/4/31.

In United States Circuit Court of Appeals for the Second Circuit

(Indorsed:) United States Board of Tax Appeals. Filed Mar. 3, 1932.

DAVID BURNETT, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

ERNEST BROOKS, HAROLD WILSON BROOKS, AND WALTER DOUGLAS Brooks, as executors of the will of Ernest Augustus Brooks, respondents

DOCKET NO. 32401

Statement of evidence

Stipulation as to evidence, etc.

It is stipulated and agreed by and between the parties named in the above-entitled cause, appearing by their respective counsel of record, that the following statement, in narrative form, contains the substance of all the evidence heard and received by the United States Board of Tax Appeals at the hearing before it of this cause, in the city of Washington, District of Columbia, on the 5th day of December, 1929; that all of the evidence heard and received by the board was, except as hereinafter indicated, in the form of depositions theretofore duly taken, and of exhibits duly introduced and received in evidence, photostatic copies of which said exhibits appear herein and form a part hereof.

It is further stipulated and agreed that at the hearing of this cause before said board, there was introduced in evidence, by counsel for the respective parties hereto, both the direct and the cross-examination of the witness whose depositions had theretofore been taken as aforesaid, and that at said hearing before the board all objections saved and reserved by counsel for the respective parties at the time of the taking of said depositions were formally waived, save only those certain objections, hereinafter noted, which were formally renewed by counsel for the respective parties appearing at said hearing, with respect to which said renewed objections the board, at said hearing, ruled as herein indicted.

28 It is further stipulated and agreed that, on behalf of the respondents herein (petitioners below), there was duly taken the deposition of Ernest Brooks, a witness of lawful age, who, being first duly sworn according to law, deposed and testified as follows:

That his name is Ernest Brooks, and he resides at Lawrence, Long Island; that he is a member of the firm of Starrett & Van Vleck, has an office at 393 Seventh Avenue, New York City, and is engaged in the business of architecture.

That he is the Ernest Brooks who is the petitioner in the case pending before the United States Board of Tax Appeals, numbered 32401 on the appeal docket, and that Harold Wilson Brooks and Walter Douglas Brooks are also petitioners therein; that they are witness's brothers and his fellow executors of the estate of Ernest

Augustus Brooks, witness's father; that witness was familiar with the business of his father prior to his death, and that his father was engaged in the sugar and commission business in Santiago de Cuba; that witness's father did not have any business in the United States; that the letter exhibited to him by his attorney, Mr. Dohr, was a letter which witness had received from the office of the Commissioner of Internal Revenue.

Whereupon the said letter, exclusive of pencil notations thereon, was offered and received in evidence and marked "Petitioners' Exhibit No. 1. November 7, 1929, R. M. S.," and is as follows:

Petitioners' Exhibit 1, Nov. 7, 1929, R. M. S.

TREASURY DEPARTMENT.
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, December 24, 1926.

(Indorsed:) Received Dec. 28, 1926.
MT–ET–12402–NR–HHC.
District of 3rd New York.
Estate of Ernest Augustus Brooks.
Date of death, October 31, 1924.
Tentative deficiency, $24,865.88.
ERNEST BROOKS ET AL.,
Executors, estate of Ernest Augustus Brooks,
% Green and Hurd, Attorneys,
52 Broadway, New York, N. Y.

SIRS: The estate tax return filed for the above-named estate has been examined and a deficiency in respect of the tax has been tentatively determined.

If you acquiesce in the deficiency as determined, or in any part thereof, you may sign the enclosed waiver of the restrictions on the assessment of all or so much of the undischarged portion of the deficiency as results from adjustments in which you acquiesce and forward it to the Commissioner of Internal Revenue, Washington, D. C.

If you desire to protest against any portion of the deficiency such protest must be filed with the Commissioner of Internal Revenue within sixty days from the date of this letter. The procedure incident to the filing of a protest is governed by the regulations relating to estate tax, copies of which may be obtained upon application to the collector or to this office.

This determination is tentative only and no petition herefrom lies to the Board of Tax Appeal. If, upon further consideration,
29 at the expiration of the 60-day period for filing protest, it appears that a deficiency in respect of the tax exists final determination thereof will be made and you will be notified by registered mail in accordance with the provisions of section 308 (a) of the revenue act of 1926.

Examination of the return discloses the following:

Correct amount of tax	$25,201.08
Tax shown on the return	335.20
Deficiency	24,865.88

The following itemization shows the tentative findings of the bureau in accordance with the estate tax law.

A gross estate wherever situated, herein determined	$792,470.39
A gross estate in the United States, herein determined	654,137.96
Deductions allowed	9,119.98
A net estate in the United States, herein determined	645,017.98

The estate took a credit of $83.80 which is 25 per centum of the tax shown on the return, $335.20, on account of State inheritance tax paid to the State of New York. Inasmuch as the amount paid to the State of New York was $216.92, this is the amount allowable under the estate tax law. Accordingly, the undischarged portion of the tax is $24,732.76.

There will be assessed and collected as a part of the undischarged portion of the tax $24,732.76, interest at the rate of six per centum per annum from one year after decedent's death to the date of assessment or to the thirtieth day after the filing of the waiver of the restrictions on the assessment, whichever is the earlier.

Detailed itemization, gross estate

	Returned	Tentatively determined
Stocks and bonds		
94 shares Associated Dry Goods preferred	$8,671.50	$8,883.00
15 shares Baltimore and Ohio R. R. Co. common	922.50	924.38
4 shares Chicago and Eastern Illinois Railway Co. common	127.00	127.50
$50,000 face amount Michigan Central R. R. Co. first mtg. 4% bond		45,000.00
Accrued interest on above item		663.04
$5,000 Tennessee Coal, Iron and R. R. Co. general mtge. 5% bond		5,087.50
Accrued interest on above item		82.88
$25,000 Illinois Central R. R. Co. first mtge. 4% gold bond		23,093.75
Accrued interest on above item		331.54
$25,000 Union Pacific R. R. Co. first mtge. 4% bond		23,125.00
Accrued interest on the above item		331.54
$20,000 C. & O. R. R. Co. first consolidated general mortgage 4% bond		16,925.00
Accrued interest on the above item		265.22
$25,000 Chicago, Rock Island and Pacific R. R. Co. general mortgage 4% bonds		20,812.50
Accrued interest on the above item		331.54
$10,000 Erie R. R. Co. first consolidated, general prior lien 4% bonds		7,050.00
Accrued interest on above item		132.61
$5,400 Reading Co. general and refunding mortgage, series "A," 4½% bond		5,076.00
Accrued interest on the above item		80.50
$2,700 Philadelphia and Reading Coal and Iron Co. 5% bond		2,733.75
Accrued interest on the above item		41.43
$35,000 Northern Pacific R. R. Co. prior lien 4% bond		31,018.75
Accrued interest on the above item		114.13
$25,000 Pacific R. R. of Missouri first ext. mtge. 4% bond		22,562.50
Accrued interest on the above item		247.28
$25,000 Central Pacific R. R. Co. first and refunding mtge. 4% bond		21,937.50
Accrued interest on the above item		247.28
$3,000 Dominican Republic con. adm. sinking fund 5% bond		3,030.00
Accrued interest on the above item		37.91
$3,000 New York Central and Hudson River R. R. Co. 3½% bond		3,850.00
Accrued interest on the above item		43.27
$25,000 Atlantic Coast Line R. R. Co. first consolidated mtge. 4% bond		22,875.00
Accrued interest on the above item		165.75
$49,000 New York, Chicago and St. Louis first mortgage 4% bond		45,325.00
Accrued interest on the above item		161.54
$25,000 Atchison, Topeka, and Santa Fe general mortgage 4% bond		22,562.50
Accrued interest on the above item		82.42
$25,000 St. Louis, Iron Mt. and Southern Ry. general cons. mortgage 5% bond		25,031.25
Accrued interest on the above item		103.03
$5,000 B. & O. R. R. Co. first mortgage 4% bond		4,400.00
Accrued interest on the above item		16.48
$3,000 Peoria & Eastern Ry. Co. consolidated mortgage 4% bond		2,373.75
Accrued interest on the above item		9.89
$10,000 American Smelting and Refining Co. first mtge. series "A" 5% bond		9,625.00
Accrued interest on the above item		41.20

Detailed itemization, gross estate—Continued

	Returned	Tentatively determined
Stocks and bonds—Continued		
$25,000 Norfolk and Western R. R. Co. first cons. mtge. 4% bond		$22,406.25
Accrued interest on the above item		82.42
$15,000 city of New York 4% stock		14,775.00
Accrued interest on the above item		298.57
$10,000 Chicago and North Western Ry. Co. general mortgage 3½% bond		7,500.00
Accrued interest on the above item		174.04
$400 Evansville, Indianapolis & Terre Haute Ry. first mortgage 7% bond		405.00
Accrued interest on the above item		13.92
$24,000 Lake Shore and Michigan Southern Ry. 3½% bond		18,900.00
Accrued interest on the above item		348.85
$5,000 Oregon R. R. & Navigation Co. consolidated mortgage 4% bond		4,400.00
Accrued interest on the above item		83.05
$4,000 Kingdom of Belgium 20-year external sinking fund 7½% bond		4,390.00
Accrued interest on the above item		124.59
$3,000 Kingdom of Sweden 20-year 6% bond		3,131.25
Accrued interest on the above item		67.87
$300 Cleveland, Cincinnati, Chicago, and St. Louis Ry. Co. ref. & Improvement 6% bond		215.00
Accrued interest on the above item		5.97
$5,000 Missouri-Kansas-Texas R. R. Co. prior lien mtge. series "B" 4% bond		3,575.00
Accrued interest on the above item		66.30
$5,000 Missouri-Kansas-Texas R. R. Co. prior lien mtge. series "A" 5% bond		4,537.50
Accrued interest on the above item		82.88
$20,000 Canadian National Railways 30-year 4½% bond		19,150.00
Accrued interest on the above item		114.36
$10,000 Kingdom of Norway 20-year 6% ext. bond		9,850.00
Accrued interest on the above item		148.37
666 shares capital stock of Central Romelie S. A. Cuba Joint Stock Co. of Guantanamo, Cuba		50,000.00
$1,333.50 Reading Co. general & refunding mortgage series "A" 4½% bond		1,253.49
Accrued interest on the above item		19.99
$666.67 Philadelphia and Reading Coal & Iron Co. ref. 5% bond		675.20
Accrued interest on the above item		11.05
$5,000 Interborough Rapid Transit Co. 5% first refund bond		3,331.25
Accrued interest on the above item		82.88
$3,000 Southern Ry. Co. first cons. general mortgage 5% bond		3,030.00
Accrued interest on the above item		49.73
$7,000 Swiss Confederation twenty-year sinking fund 8% bond		8,032.50
Accrued interest on the above item		185.66
$3,000 Great Northern R. R. Co. first and ref. mtge. series "A" 4½% bond		2,737.50
Accrued interest on the above item		42.28
$5,000 French Government 20-year ext. sinking fund 8% bond		5,237.50
Accrued interest on the above item		50.83
$4,000 Baltimore and Ohio Railroad Co. first mtge., 50-year 4% gold bond		3,520.00
Accrued interest on the above item		13.18
$4,000 New York, Chicago and St. Louis, first mortgage 4% bond		3,700.00
Accrued interest on the above item		13.18
$5,000 South and North Alabama R. R. gen. cons. 50-year 5% bond		5,225.00
Accrued interest on the above item		20.61
$5,000 Canada Southern Railway Co. first cons. mtge. guar. 5% bond		5,100.00
Accrued interest on the above item		20.61
$3,000 Cleveland Short Line Railway Co. first guar. mortgage 4½% bond		2,868.75
Accrued interest on the above item		11.13
$7,000 Kingdom of Norway ext. sinking fund 8% bond		7,805.25
Accrued interest on the above item		46.16
$7,000 Kingdom of Denmark ext. sinking & refunding 8% bond		7,743.75
Accrued interest on the above item		24.62
$2,000 Indiana Steel Corporation first mortgage 5% bond		2,055.00
Accrued interest on the above item		49.73
$5,000 Oregon Short Line R. R. Co. guar. refund. mortgage 4% bond		4,868.75
Accrued interest on the above item		83.06
$5,000 Kingdom of Belgium 25-year ext. sinking fund 7½% bond		5,487.50
Accrued interest on the above item		155.73
Mortgages, notes, cash, and insurance		
Balance on deposit with the Lawrence Turnure & Co., 64 Wall Street, New York City		14,517.98
Deductions		
Attorneys' fees	$6,000.00	5,500.00

31 Deduction is made for attorneys' fees, in the amount found upon investigation, will be paid.

The sum of $11,048.61 is claimed in the return as a deduction from the gross estate for funeral expenses, attorneys' fees, miscellaneous

administration expenses, and debts of decedent. The proportionate share of this amount, $9,119.98, is herein tentatively deducted from that part of the gross estate situated in the United States, in accordance with the provisions of the revenue act of 1924.

All of the remaining items shown on the return, as a part of the gross estate in the United States, have been verified as filed.

Certificates releasing the estate tax lien on the American securities belonging to the decedent have been forwarded to the Collector of Internal Revenue, 250 West 57th Street, New York, New York, for delivery when the total tax due is paid.

This case has been audited in accordance with the retroactive provision of the revenue act of 1926 with respect to rates of tax.

Respectfully,

R. M. ESTES,
Deputy Commissioner.

EDM.
INC.

Treasury Department
Internal Revenue Service

Waiver of right to file petition with the United States Board of Tax Appeals and consent to assessment and collection of deficiency in estate tax.

NOTE.—When executed, this waiver will not extend the statute of limitations for refund or assessment of tax, nor will it be an agreement under the provisions of section 1106 of the revenue act of 1926.

To the COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C.

Attention: Miscellaneous Tax Unit, Estate Tax Division.

The undersigned, executor of the estate of Ernest Augustus Brooks, waives his right to file a petition with the United States Board of Tax Appeals for a redetermination of $——— (*deficiency) (*of the deficiency) disclosed by the letter from the Commissioner of Internal Revenue, Washington, D. C., dated Dec. 24, 1926, and bearing the symbols NR-12402-3rd NY, and consents to the immediate assessment and collection of the amount set forth above.

Signed_____ Date_____
Executor

Street_____ City_____ State_____

Further testifying, the witness stated that at the time of his death his father was the owner of certain stocks and bonds and that he, witness, was familiar with where those stock certificates and bonds were located, and that the list then shown to him was one which he had prepared and he recognized as a list of bonds such as he, witness, held in his possession for his father; that he had possession of the certificates and bonds at the time of his father's death and for some time prior to his death—several years prior to his death.

Whereupon there was offered and received in evidence the aforesaid list marked "Petitioner's Exhibit No. 2, November 7, 1929, R. M. S.," and is as follows:

* Strike out words not applicable.

Petitioner's Exhibit 2, Nov. 7, 1929, R. M. S.

Securities of the estate of E A. Brooks now held by Ernest Brooks, January 23, 1925

Friday, Oct. 31, 1924			Bonds	Due	Interest	Par value	Market value	Accrued interest
Bid	Sale	Asked						
.....	94	.....	Reading Co. gen. & ref. mortgage 4½% series "A"	1997	Jan. & July	$1,333.50	$1,253.49	$19.99
.....	101¼	.....	Philadelphia & Reading C. & I. Company ref. 5's	1973	Jan. & July	666.67	675.20	11.05
.....	66⅝	.....	Interborough Rapid Transit Co. 5% first refund	1966	Jan. & July	5,000.00	3,331.25	82.88
.....	101	.....	The Southern Railway Company first cons. general mtg. 5%	1994	Jan. & July	3,000.00	3,030.00	49.73
.....	114¾	.....	Swiss Confederation twenty-year sinking fund 8%	1940	Jan. & July	7,000.00	8,032.00	185.66
.....	91¼	.....	Great Northern R. R. Co. first & ref. mortgage 4¼% series "A"	1961	Jan. & July	3,000.00	2,737.50	42.28
.....	104⅜	.....	French Government twenty-year ext. sinking fund 8%	1945	Mar. & Sept	5,000.00	5,237.50	50.83
.....	88	.....	Baltimore & Ohio R. R. first mtg. 50-year gold 4%	1948	Apr. & Oct	4,000.00	3,520.00	13.18
.....	92½	.....	New York, Chicago & St. Louis first mtg. general 4%	1937	Apr. & Oct	4,000.00	3,700.00	13.18
104½	*	105¾	South & North Alabama gen. cons. 50-year 5%	1963	Apr. & Oct	5,000.00	5,225.00	20.61
.....	102	.....	Canada Southern R. R. Co. first cons. mtg. guar. A. 5%	1963	Apr. & Oct	5,000.00	5,100.00	20.61
95⅝	**	97	Cleveland Short Line Ry Co. first guar. mtg. 4½%	1961	Apr. & Oct	3,000.00	2,868.75	11.13
.....	112⅜	.....	Kingdom of Norway ext. sinking fund 8%	1940	Apr. & Oct	7,000.00	7,866.25	46.16
.....	102$^{23}/_{32}$	.....	United States Fourth Liberty loan 4¼%	1933–1938	Apr. & Oct	2,000.00	2,055.00	3.76
.....	110⅝	.....	Kingdom of Denmark ext. sinking & ref. 8%	1945	Apr. & Oct	7,000.00	7,743.75	24.62
.....	102¾	.....	Indiana Steel Corp. first mtg. 5%	1952	May & Nov	2,000.00	2,055.00	49.73
97⅜	***	97¾	Oregon Short Line R. R. guar. refund. mtg. 4%	1929	June & Dec	5,000.00	4,868.75	83.06
.....	102$^{29}/_{32}$	.....	United States First Liberty loan conv. 4¼%, reconverted to 4¼%	1932–1947	June & Dec	5,000.00	5,131.25	88.25
.....	109¾	.....	Kingdom of Belgium 25-year external sinking fund 7½%	1945	June & Dec	5,000.00	5,487.50	155.73
						79,000.17	79,918.49	972.44

*5 bonds sold at 104⅜ during week.
** 28 bonds sold at 95⅝ and 95¾ during week.
*** 45 bonds sold at 97¼ and 97½ during week.

33 Continuing, the witness testified that at the date of his death his father was the owner of 666 shares of the capital stock of the Central Romelie S. A. Cuba Joint Stock Company, of Guantanamo, Cuba, and that the certificates representing those shares were in the possession of witness and those certificates were in witness's possession in addition to the list shown on Exhibit No. 2; that witness, at the time of his father's death, had knowledge of the affairs of that company and knew that it was located in Guantanamo, Cuba, and that it was operating the business of sugar merchants there; that it was a Cuban corporation; that his father, at the time of his death, did not owe the witness any money and that these securities shown by petitioner's Exhibit No. 2, and the shares of stock of the Central Romelie were not pledged with witness for a loan; that witness deposited the income from these in his father's account in the bank, the Fifth Avenue Bank, New York; that he recognized a list then tendered him by his counsel as a list of the securities held for his father's account by Lawrence Turnure & Company at the time of his father's death, and that these securities were turned over to witness by Lawrence Turnure & Company.

Whereupon counsel for petitioners offered in evidence the said list which was received in evidence without objection and marked "Petitioners' Exhibit No. 3, November 7, 1929, R. M. S.," and is as follows:

Petitioners' Exhibit 3, Nov. 7, 1929, R. M. S.

Received from Lawrence Turnure & Company the following securities:

$50,000 Michigan Central R. R. Air Line 1st mtg. 4% bonds due 1940, coupon bonds Nos. 76/100, 251/75, with the July 1st, 1925, and all subsequent coupons attached.

$49,000 New York, Chicago & St. Louis R. R. 1st mtg. 4% bonds due 1937, coupon bonds Nos. 777/9, 2467/8, 5048/50, 5466/9, 9069/75, 9106/11, 9967/76, 11656/8, 13348/9, 13709/12, 13714, 17365, 18498/9, 19895, with the October 1st, 1925, and all subsequent coupons attached.

$25,000 Pacific R. R. of Missouri 1st mtg. extd. 4% bonds of 1938, coupon bonds Nos. 26, 147, 214, 216/18, 1312, 1315, 1537, 1539, 1579/81, 1888, 1926, 2838, 3219, 3250, 3268, 4428, 4656/7, 5092, 5234, 6513, with the August 1st, 1925, and all subsequent coupons attached.

$25,000 Illinois Central R. R. 1st mtg. 4% bonds due 1951, coupon bonds Nos. 11094/5, 11616/25, 11118, 11775, 11575/82, 12452/4, with the July 1st, 1925, and all subsequent coupons attached.

$25,000 Union Pacific R. R. 1st mtg. 4% bonds due 1947, coupon bonds Nos. 8139/40, 21752/3, 21824/5, 22996/8, 30750/1, 56137/8, 63206/17, with the July 1st, 1925, and all subsequent coupons attached.

$24,000 Lake Shore & Michigan Southern Ry. 3½% bonds due 1997, coupon bonds Nos. 4564/87, with the June 1st, 1925, and all subsequent coupons attached.

$35,000 Northern Pacific R. R. prior lien 4% bonds due 1997, coupon bonds Nos. 218/25, 5458, 5461, 22462, 42186, 19804/8, 13260, 42209, 42210/11, 60553, 61684, 69427/9, 13251/7, 31830/1, with the July 1st, 1925, and all subsequent coupons attached.

34 $20,000 Chesapeake & Ohio Ry., Richmond & Allegh. Div., 1st cons. mtg. 4% bonds of 1989, coupon bonds Nos. 12, 19, 545, 989/90, 1350, 1353, 2571/2, 2574/5, 3526/7, 3530/3, 4066, 4156, 5392, with the July 1st, 1925, and all subsequent coupons attached.

$25,000 Central Pacific R. R. 1st rfdg. mtg. 4% bonds due 1949, coupon bonds Nos. 66554/73, 47153/57, with the August 1st, 1925, and all subsequent coupons attached.

$1,000 Findlay, Ft. Wayne & Western R. R. 2nd mtg. 5% income bond of 1945; No. 462 of no value.

$25,000 Atchison, Topeka & Sante Fe R. R. genl. mtg. 4% bonds of 1995, coupon bonds Nos. 99, 2846, 3208, 55478/9, 76525, 76527 at $1,000 each, 1299/13007, 10222/6, 10231/40, 20254/5, 20411, 46617/18 at $500 each, with the October 1st, 1925, and all subsequent coupons attached.

$25,000 Chicago, Rock Island & Pacific Ry. genl. mtg. 4% bonds due 1988, coupon bonds Nos. 8226/35, 16225/9, 15405/07, 46831, 52145/50, with the July 1st, 1925, and all subsequent coupons attached.

$25,000 St. Louis, Iron Mountain & Southern Ry. genl. cons. mtg. 5% of 1931, coupon bonds Nos. 3469, 7047, 7176/7, 3783, 22733, 33936/7, 35602, 41392/400, 41603, 35112, 39335, 40124/5, 43021/2 with the October 1, 1925, and all subsequent coupons attached.

$10,000 Chicago & Northwestern R. R. genl. mtg. 3½% bonds due 1987, coupon bonds Nos. 5651/60, with the November 1st, 1925, and all subsequent coupons attached.

$5,000 New York Central & Hudson River R. R., Michigan Central coll. 3½% bonds of 1998, coupon bonds Nos. 13292/6 with the August 1st, 1925, and all subsequent coupons attached.

$5,000 Oregon R. R. & Navigation Co. cons. mtg. 4% bonds of 1946, coupon bonds Nos. 16804/8, with the June 1st, 1925, and all subsequent coupons attached.

$5,000 Baltimore & Ohio R. R. 1st mtg. 4% bonds of 1948, coupon bonds Nos. 5553, 6401/4, 7406, 8347, 8361/2, 8412 at $500, each with the October 1st, 1925, and all subsequent coupons attached.

$3,000 Peoria & Eastern Ry. 1st cons. mtg. 4% bonds due 1940, coupon bonds Nos. 1523/5, with the October 1st, 1925, and all subsequent coupons attached.

$25,000 Atlantic Coast Line R. R. 1st cons. mtg. 4% bonds of 1952, coupon bonds Nos. 7184/7208, with the September 1st, 1925, and all subsequent coupons attached.

$25,000 Norfolk & Western Ry. cons. mtg. 4% bonds of 1996, coupon bonds Nos. 13935/51, 13960/7 with the October 1st, 1925, and all subsequent coupons attached.

$10,000 Erie R. R. prior lien 4% bonds of 1996, coupon bonds Nos. 6085/93, 30214 with the July 1st, 1925, and all subsequent coupons attached.

$15,000 city of New York 4% corporate stock of 1956, registered in the name of Lawrence Turnure & Co., certificates Nos. 733/5, at $5,000 each.

$5,000 Tennessee Coal Iron R. R. Co. genl. mtg. 5% bonds of 1951, coupon bonds Nos. 4078/79, 4489/91 with the July 1st, 1925, and all subsequent coupons attached.

15 shares Baltimore & Ohio R. R. Co. common stock, certificate No. A25097, in the name of Lawrence Turnure & Co.

35 94 shares Associated Drygoods Corporation 1st pfd. stock, certificates Nos. 823 for 63 shs., 3975 for 14 shs., 3976 for 16 shs., and 4462 for 1 share, all in the name of Lawrence Turnure & Co.

$10,000 American Smelting & Rfg. Co. 1st mtg. 5% bonds of 1947, series A, coupon bonds Nos. 2766/75 with the October 1st, 1925, and all subsequent coupons attached.

$400 Evansville & Indianapolis R. R. Co. reorganization final distribution of certificate, name of Lawrence Turnure & Co., No. 79.

$400 Evansville & Indianapolis & Terre Haute Ry. Co. 1st mtg. 7% bonds due May 1st, 1950, coupon bonds Nos. C28/31 with the November 1st, 1925, and all subsequent coupons attached.

11 shares Wheeling & Lake Erie Ry. Co. preferred stock, certificate No. B O 3290, in the name of Lawrence Turnure & Co.

11 shares Wheeling & Lake Erie Ry Co. common stock, certificate No. C O 6772, in the name of Lawrence Turnure & Co.

$4,000 Kingdom of Belgium 7½% external loan bonds due 1945, coupon bonds Nos. 22396, 15629/31 with the June 1st, 1925, and all subsequent coupons attached.

$3,000 Kingdom of Sweden 6% external bonds due 1939, coupon bonds Nos. 10919, 9127, 12633 with the June 15th, 1925, and all subsequent coupons attached.

$3,000 Dominican Republic Customs Administration sinking fund 5% bonds due 1958, coupon bonds Nos. 6786, 1119/20 with the August 1st, 1925, and all subsequent coupons attached.

$300 Cleveland, Cincinnati, Chicago & St. Louis Ry. Co. rfdg. & impvt. 6% bonds 1941, coupon bonds Nos. 130/32 with the July 1st, 1925, and all subsequent coupons attached.

4 shares Chicago & Eastern Illinois Ry Co. common stock, certificate No. O 2967, in the name of Lawrence Turnure & Co.

$5,000 Missouri, Kansas & Texas R. R. Co. prior lien mtg. 4% B bonds due 1962, coupon bonds Nos. 6177/81 with the July 1st, 1925, and all subsequent coupons attached.

$5,000 Missouri, Kansas & Texas R. R. Co. prior lien mtg. 5% A bonds due 1962, coupon bonds Nos. 22236/40 with the July 1st, 1925, and all subsequent coupons attached.

$5,400 Reading Co. general & rfdg. mtg. 4½% bonds due 1997, coupon bonds Nos. 56731/5 at $1,000 each, 10418/420 at $100 each, and No. 10531 at $100, with the July 1st, 1925, and all subsequent coupons attached.

$2,700 Philadelphia & Reading Coal & Iron Co. rfdg. mtg. 5% 1973, coupon bonds Nos. 22427/8 at $1,000 each, 1346 at $500, 12732 and 12832 at $100 each, with the July 1st, 1925, and all subsequent coupons attached.

$20,000 Canadian National Rys. 4½% 30-year bonds, due 1954, coupon bonds Nos. 23092/111 with the September 15th, 1925, and all subsequent coupons attached.

$10,000 Kingdom of Norway 6% bonds, external, due 1944, coupon bonds Nos. 17083/92 with the August 1st, 1925, and all subsequent coupons attached.

Continuing, witness stated that at the time of his death his father did not owe Lawrence Turnure & Company any money, and that the securities shown on petitioners' Exhibit No. 3 were not in any way pledged or hypothecated with Lawrence Turnure & Company;
36 that witness is familiar with the relationship existing between Lawrence Turnure & Company and his father, and that the income from those securities was deposited by Lawrence Turnure & Company to his father's account; that his father had a drawing account with Lawrence Turnure & Company and those coupons were deposited to his credit in that account, and to get the income his father drew a check on it against the account which checks were cashed by Lawrence Turnure & Company, who made a charge for the services they rendered his father; that witness knew that his father's will was executed in Santiago, Cuba.

Cross-examination:

On cross-examination the witness stated that his father was engaged in business as a partner in the firm of Brooks & Company, Santiago, and that Brooks & Company told in Cuba for American consumption—foreign consumption, the sugar which they manufactured; sold in Cuba or through their commission merchants in this country, and that his father did not at any time go to the United States for the purpose of placing orders for the partnership; that his father came to the United States simply for pleasure; that he came to the United States and he went to Europe very often in the summer time. And thereupon the following colloquy occurred:

"Q. He maintained a local residence, did he not?

"A. Where?

"Q. In New York City.

"A. I don't know how to answer that question. The house was mother's house. Did he maintain a residence if it was mother's residence?

"Q. It was your mother's residence?

"A. Yes."

Continuing, the witness testified that the reason he was in possession, at the time of his father's death, of certain securities belonging to his father, was that he, witness, held them for his father for several years prior to his death and that at the time his father transferred the securities to witness his father asked witness to take charge

of them and collect the interest and deposit it to his account; that the securities were in a safe deposit box in the Fifth Avenue Bank; that all of these securities owned by his father were either in the Fifth Avenue Bank or in the possession of Lawrence Turnure & Company; that the charge made by Lawrence Turnure & Company was a service charge for collecting coupons; it was a service charge of a broker; that Brooks & Company, the partnership, did not do business in the United States; that witness did not have frequent contact with Lawrence Turnure & Company; had no contact with them until the time of his father's death; did not know the nature of the business conducted by Lawrence Turnure & Company as of October 31, 1924, but it was understood they were bankers; that witness could not prove it and did not know whether they were subject to the jurisdiction of the State banking department as of that date.

Redirect examination:

On redirect examination the witness stated that he did not know that the service charge of Lawrence Turnure & Company was the charge of a broker; that he did not know that brokers in New
37 York City made a charge for collecting income; that Lawrence Turnure & Company made a charge for collecting coupons that a bank usually does for taking care of one's securities. Witness further testified that so far as he knew no charge is made for collecting income as to brokerage accounts; that of his own knowledge his father drew checks against the account with Lawrence Turnure & Company and that such checks were honored by that company; that he did not know whether any other persons had checking accounts at Lawrence Turnure & Company; that father of the witness did not own or rent a house in the United States.

Recross-examination:

Witness testified that he did not know whether, on October 31, 1924, and prior thereto, Lawrence Turnure & Company dealt in stock, bonds, and other securities; that in answering a question on direct examination that the charge of Lawrence Turnure & Company was the service charge of a broker, he did not know just what that meant as it was a technical question with which he was not familiar; that he was not really qualified to express any opinion as to the nature of the business conducted by Lawrence Turnure & Company as of October 31, 1924.

Redirect examination:

On further redirect examination the witness stated that prior to his death his father was engaged in business in Cuba as a member of the firm of Brooks & Company, but that at the time of death his father was not actively engaged in that business but had retired; that he did not think his father had any interest in said business at the date of his death; that the business of Brooks & Company owed his father money at the date of death; that he had first hand knowledge

of the transactions between his father and Lawrence Turnure & Company; that to his own knowledge his father had a checking account with Lawrence Turnure & Company; that his father drew checks against such checking account and that they were honored.

It is further stipulated and agreed that, on behalf of the respondents herein there was duly taken the deposition of Francis B. Hamlin, a witness of lawful age, who, being first duly sworn according to law deposed and testified as follows:

That his residence is at Garden City, New York; that by profession he is a lawyer and a member of the firm of Greene & Hurd, 52 Broadway, New York City; that he has practiced law since 1911; that during his practice of law he has had occasion to advise in administration of estates; that upwards of ten years past most of his time was devoted to handling the administration of estates; that the firm of Greene & Hurd was retained as attorney by the executors of the estate of decedent, and that witness had charge of this case throughout administration. The witness further testified that he received a copy of the last will of the decedent, which was in Spanish, and was subsequently informed by Spanish counsel that the will had been executed in Santiago, Cuba; that he recognized a paper then shown by him by his counsel as an English translation of the will of the decedent, certified by the clerk of the New York County Surrogates' Court, and that it was a translation of the original Spanish document.

Whereupon counsel for the petitioners offered in evidence
38 the said certified copy of the decedent's will, which was received in evidence without objection and marked "Petitioners' Exhibit No. 4, November 7, 1929, R. M. S.," and is as follows:

Petitioners' Exhibit 4, Nov. 7, 1929, R. M. S.

In the city of Santiago de Cuba, on December 19th, 1919, before me, Luis de Hechavarria y Limonta, attorney at law and notary public of the college of the district (Colegio del Territorio), with residence and legal domicile in this city, appears. Mr. Ernesto Augusto Brooks y Despaigne, of age, a property owner, a native of this city and district and with domicile on the Calle Alta de Mariano Corona No. 18, British subject, whom the witnesses declare they know, and whom they consider, as also do I, the notary, during this act to be sufficiently qualified legally to make a will; and by virtue of this he executes his will, without demanding secrecy, in the following manner:

1. He declares that he is the legitimate son of Mr. Tomás Brooks y Nicholson and Mrs. Rosa Despaigne y Ducongé, both defunct; having been married for the first and only time to Mrs. Elizabeth Ana Douglas y Arzola, from September 9th, 1869, until her death on November 8th, 1917, from which marriage they had four children named Digna Maria, Walter Douglas, Ernesto, and Harold Wilson Brooks y Douglas, all of age.

2. He appoints as his testamentary executors, who shall not be required to furnish any kind of bond as security for the discharge thereof, his legitimate sons, Messrs. Walter Douglas, Ernesto, and Harold Wilson Brooks y Douglas, to exercise their duties in the order in which they are mentioned, conferring upon his said executors the necessary legal faculties for the proper fulfillment thereof and extending the period granted by law for their operations to whatever date they may require, and authorizing them to delegate this charge in whole or in part to persons of their confidence whenever they so deem advisable, and authorizing them expressly to make contracts of sale and lease of those properties which constitute the estate; cancel mortgages, issue powers of attorney, and perform any other acts thru public or private documents which they deem of greatest advantage to the interests of the estate.

3. He also declares that the amount of his properties, their description and origin, as well as all outstanding assets and liabilities which may exist are known to his executors and heirs.

4. He declares also that he institutes and appoints as his only and universal heirs of all his estate, rights, and actions, had and to be had, his said legitimate children, Digna Maria, Walter Douglas, Ernesto and Harold Wilson Brooks y Douglas, that they enjoy and inherit it all in the name of the testator, for their free and absolute disposal.

5. That in the use of the authority which the law grants him, he prohibits absolutely any judicial intervention in his estate, even though minors may be interested, for he wishes that all the operations be handled extrajudicially, authorizing his executors exercising this will to appoint experts, accountants to make allotments of the estate and make any other appointments that may become necessary.

39 6. And he finally declares that he revokes and cancels any other will he may have made previous to the present one, as only this one shall be considered valid and subsistent so long as it is not canceled by another later one.

Thus he states and deposes before the witness to this instrument, who are of age, of this city, and without any disqualification to act as such, Messrs. Dr. Desiderio y Anráz y Vera, Pedro Pablo Valiente y del Monte, and Ricardo Federico Gómez y Fernández.

And, this will read by me, the notary, aloud and in one single act by request of all present, although I pointed out to them the right granted them by law to do so, each for himself, the testator Mr. Ernesto Augusto Brooks y Despaigne declared that since the document is in every respect in accordance with what he expressed, he ratifies it and in proof thereof signs it, together with the said witnesses.

To all of which, and to the fact that I know the testator, and that this act was completed without any interruption, and that there have been complied with all the formalities required in such cases by the Civil Code in effect, and to everything else contained in this public document which I sign and countersign with my flourish, and the execution whereof took place to-day at 2.30 p. m., I, the

notary, testify. E. A. Brooks.—R. F. Gómez.—D. Arnáz.—Pedro P. Valiente.—Luis de Hechavarría.

STATE OF NEW YORK,
County of New York, ss:

I, Martin G. McCue, clerk of the surrogate's court of said county, do hereby certify that I have compared the foregoing copy of the last will and testament (will embodied in decree) of Ernest Augustus Brooks, deceased, admitted to probate January 15th, 1925, and recorded in liber —— of wills, page —— with the original record thereof now remaining in this office, and have found the same to be a correct transcript therefrom and of the whole of such original record.

In testimony whereof, I have hereunto set my hand and affixed the seal of the surrogate's court of the county of New York, this 19th day of January, in the year of our Lord one thousand nine hundred and twenty-five.

MARTIN G. MCCUE,
Clerk of the Surrogate's Court.

P-2791-1924.
MW

Further testifying, the witness stated that as attorney for the estate he advised the executors to initiate probate proceedings in New York in order to secure release of certain assets of the estate; that the original will, under the Cuban law, was on deposit with a notary in Cuba and that no legal proceedings in Cuba were required under the Cuban law, particularly in view of the express provisions of the will itself; that in connection with the probate proceedings in New York transfer tax proceedings were had. Whereupon the following colloquy occurred:

"Q. Do you recall the basis upon which the estate was taxed by the State of New York?

40 "Mr. SLANKER. Objected to as immaterial and irrelevant.

"A. My recollection is that there were certain chattels here which under the New York transfer tax law were taxable in the estate of a nonresident."

This objection was renewed by counsel for petitioner herein at the time this case was heard before the Board of Tax Appeals in Washington, D. C., on December 5, 1929, which objection was sustained by the board.

Further testifying, the witness stated that there were no probate proceedings in Cuba in connection with this estate, because the witness advised the executors that such proceedings were unnecessary; the advice that probate proceedings in Cuba were unnecessary was based upon an opinion obtained from Cuban counsel; that the effect of the opinion obtained from Cuban counsel was that under the Cuban law no intervention of any court in Cuba was required for the administration and distribution of decedent's estate.

Cross-examination:

The witness further testified that the advice he received from Cuban counsel was by mail; that he does not know but does not think that any of the Cuban counsel are at present in New York City. In answer to a question as to whether New York State, for the purposes of State inheritance tax, taxed the same securities which the Federal Government was then attempting to tax, the witness stated that he thought not but that he believed the tax proceeding records were present, and, continuing, the witness stated that he refers to a copy of the report of the New York transfer tax appraiser and found that furniture, etc., in New York City, valued at $18,734.50; paintings in New York City valued at $2,415.00, and rugs in New York City valued at $1,183.00, were the only items subjected to tax in New York. At the hearing of this case before the Board of Tax Appeals in Washington, D. C., on December 5, 1929, counsel for petitioner herein moved to have this question and answer stricken out, and the board thereupon granted the motion and struck from the record the question propounded by the commissioner's counsel with reference to the action of the State of New York with respect to taxing the same securities, and the answer thereto.

The witness further testified that he did not think the New York statutes and the Federal statutes in connection with the taxation of stocks, bonds, and other securities are parallel. Whereupon counsel for the petitioners therein stated that he would "concede that they are not if," to which counsel for respondent therein replied "no." Upon hearing of this case before the Board of Tax Appeals in Washington, D. C., on December 5, 1929, counsel for petitioner herein moved that the question and answer with respect to whether the New York statutes and the Federal statutes with respect to the taxation of stocks, bonds, and other securities were parallel be stricken from the record, which motion was thereupon granted by the board.

Further testifying, the witness stated that his statement on direct examination, that he had been informed by Cuban counsel that the will of decedent was executed in Santiago, Cuba, was based on information received from said Cuban counsel; that he was careful not to state that of his own knowledge he knew it was so executed.

41 Redirect examination:

The witness stated that he was familiar with the fact that the will itself showed it was executed in Santiago, Cuba, and that the will speaks for itself; that he recalled making arrangements for taking depositions in Cuba of witnesses of the will; and that the New York transfer tax was determined on the basis that the decedent was a nonresident of New York.

Upon the hearing of this case before the Board of Tax Appeals in Washington, D. C., on December 5, 1929, the petitioners offered in evidence the original of a letter dated October 13, 1927, addressed to the executors of the will of the decedent, by the Commissioner of Internal Revenue, which evidence was not objected to by counsel for

respondent therein, and the said letter was thereupon received in evidence by the Board of Tax Appeals and marked "Petitioners' Hearing Exibit No. 1," and is as follows:

Petitioners' Exhibit No. 1

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, Oct. 11, 1927.

MT-ET-C1.-NR-12402-FOB.
District of 3rd New York.
Estate of Ernest Agustus Brooks.
Date of death, October 31, 1924.

(Indorsed:) U. S. Board of Tax Appeals. Div. Docket 32401, admitted in evidence Dec. 5, 1929.

ERNEST BROOKS, ET AL.,
Executors, Estate of Ernest Augustus Brooks, c/o Green and Hurd, Attorneys, 52 Broadway, New York, New York.

SIRS: The bureau has examined the protest filed on behalf of the above-named estate against the tentative findings set forth in the letter addressed to the executor by this office under date of Dec. 24, 1926. The deficiency hereby determined amounts to $24,865.88, and is fully explained in the attached statement, consisting of two pages, showing the action of the bureau with respect to the protest.

In accordance with the provisions of Title III of the revenue act of 1926, you are allowed 60 days from the date of the mailing of this letter (not counting Sunday as the sixtieth day) within which to file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency. Any such petition must be addressed to the United States Board of Tax Appeals, Earle Building, Washington, D. C., and must be mailed in time to reach the said board within the 60-day period prescribed.

Where a taxpayer has been given an opportunity to file a petition with the United States Board of Tax Appeals and has not done so within the 60 days prescribed, and an assessment has been made, or where a taxpayer has filed a petition, and an assessment in accordance with the decision, which has become final, has been made, the unpaid amount of such assessment must be paid upon notice and demand from the collector of internal revenue. No claim for abatement can be entertained.

42 If you acquiesce in this determination and do not desire to file a petition with the United States Board of Tax Appeals, you are requested to execute the enclosed Form 890, waiving (1) your right to file a petition with the United States Board of Tax Appeals and (2) the restrictions on the assessment and collection of such deficiency, and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of the Estate Tax Division,

Miscellaneous Tax Unit. In the event that you acquiesce in only a part of the determination, the enclosed form of waiver should be executed with respect to the amount of the deficiency to which you agree.

Respectfully,

D. H. BLAIR, *Commissioner.*

QR
Enclosures:
Statement.
Waiver—Form 890.

The items involved in your protest are indicated below:

Gross estate	Returned	Tentatively determined	Determined
Schedule B			
Bonds of foreign corporations and accrued interest thereon	$0.00	$24,384.97	$24,384.97
Bonds of foreign governments and accrued interest thereon	.00	55,610.49	55,610.49
Bonds of domestic corporations and accrued interest thereon	.00	460,315.32	460,315.32
Bonds of domestic municipalities and interest thereon	.00	15,073.57	15,073.57
Stock in foreign corporations	.00	50,000.00	50,000.00
Schedule C			
Balance on deposit with Lawrence Turnure & Company	.00	14,517.98	14,517.98

As no adjustment is shown, the following findings are made:

	Returned	Determined
Gross estate, wherever situated	$784,887.25	$792,470.39
Gross estate in the United States	34,021.75	654,137.96
Deductions	501.51	9,119.98
Net estate within the United States	33,520.24	645,017.98
Tax returned	335.20	25,201.08
Deficiency		24,865.88

On account of payment of State inheritance taxes there is allowable against the Federal estate tax a credit of not to exceed twenty-five per centum thereof. Accordingly, the portion of the deficiency proposed for assessment is $24,732.76, together with interest thereon at the rate of six per centum per annum from one year after the decedent's death to the date of assessment, or to the thirtieth day after the filing of waiver, Form 890, whichever is the earlier.

The foregoing evidence is all of the material evidence adduced at the hearing before the Board of Tax Appeals, and the same is approved by the undersigned, C. M. Charest, General Counsel, Bureau of Internal Revenue, as attorney for the Commissioner of Internal Revenue.

(Signed) C. M. CHAREST,
General Counsel, Bureau of Internal Revenue.

43 The foregoing is all of the material evidence adduced at the hearing before the Board of Tax Appeals, and the same is

approved by the undersigned, as attorney for the respondents on review.

(Signed) JAMES L. DOHR,
Attorney for Respondents on Review.

Order settling statement of evidence

This statement of evidence is duly approved and settled this 3rd day of March, 1932.

(Signed) LOGAN MORRIS,
Member United States Board of Tax Appeals.

FTH/y 2/27/32

In United States Circuit Court of Appeals for the Second Circuit

(Indorsed:) United States Board of Tax Appeals. Filed Mar. 3, 1932.

[Title omitted.]

Præcipe for record

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit, and deliver to the clerk of the United States Circuit Court of Appeals for the Second Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review by the said Circuit Court of Appeals for the Second Circuit, heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries of the proceedings before the board.
2. Pleadings before the board:
(a) Petition, including annexed copy of deficiency letter.
(b) Answer.
3. Findings of fact, opinion, and decision of the board.
4. Petition for review, together with proof of service of notice of filing petition for review and of service of a copy of petition for review.
5. Statement of the evidence as settled and allowed.
6. Orders enlarging time for the preparation of the evidence and for the transmission and delivery of the record.
7. This præcipe.

(Signed) C. M. CHAREST,
General Counsel, Bureau of Internal Revenue.

Service of a copy of the within præcipe is hereby admitted this 1st day of March, 1932.

(Signed) JAMES L. DOHR,
Attorney for Respondents.

FTH/y 2/27/32.

44 [Clerk's certificate to foregoing transcript omitted in printing.]

45 In United States Circuit Court of Appeals for the Second Circuit

No. 462. October term, 1931

(Argued June 13, 1932. Decided July 29, 1932)

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

ERNEST BROOKS, HAROLD WILSON BROOKS, AND WALTER DOUGLAS BROOKS, as Executors of the Will of Ernest Augustus Brooks, respondents

Appeal from the United States Board of Tax Appeals

Before L. HAND, AUGUSTUS N. HAND, and CHASE, Circuit Judges

Petition to review a decision of the United States Board of Tax Appeals. Affirmed.

G. A. Youngquist, Asst. Atty. Gen., Sewall Key, and J. Louis Monarch, Sp. Assts. to Atty. Gen. (C. M. Charest, Gen. Counsel, Bureau of Internal Revenue, Frank T. Horner, Sp. Atty., Bureau of Internal Revenue, of Washington, D. C., of counsel), for petitioner.

Greene & Hurd, of New York City (Francis B. Hamlin and James L. Dohr, both of New York City, of counsel), for respondents.

Milbank, Tweed, Hope & Webb, Edward N. Perkins, and Selden Bacon, all of New York City, amicus curiæ.

Opinion

CHASE, Circuit Judge.

The decedent, Ernest Augustus Brooks, died October 31, 1924. He was domiciled in Cuba and a British subject. At the time of his death, he was not engaged in business in the United States. He then owned bonds of foreign corporations, bonds of foreign governments, bonds of domestic corporations, bonds of a domestic municipality, and stock in a foreign corporation which were either in the possession of his son, Ernest Brooks, or of the brokerage firm of Lawrence, Turnure & Co., and were all in New York City. These securities were not used in any business or pledged or held in any way as security for any debt. They were left in the care of his son or the brokerage company. The son collected the income on the securities he held and deposited it in his father's account with the Fifth Avenue Bank of New York City. The brokerage firm collected income and deposited it in an account with that firm, against which the decedent drew checks that were always honored. At his death, the decedent had on deposit with Lawrence, Turnure & Co. $14,517.98 in this checking account.

The deficiency assessment was due to the fact that the commissioner included the above-mentioned property in the gross estate of the decedent situated in the United States. The Board of Tax Appeals held that its inclusion was erroneous, and the petition for review brings this question before us.

It is claimed that the provisions of the revenue act of 1924, c. 234, 43 Stat. 253, required the action taken by the commissioner. So far as pertinent, the statute (sections 302 (a), 303 (b–e) of the act, 26 USCA §§ 1094 note, 1095 note) is quoted:

"Sec. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

"(a) To the extent of the interest therein of the decedent at
46 the time of his death which after his death is subject to the payment of the charges against his estate and the expenses of its administration and is subject to distribution as part of his estate. * * *

"Sec. 303. For the purpose of the tax the value of the net estate shall be determined— * * *

"(b) In the case of a nonresident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States— * * *

"(d) For the purpose of Part I of this title, stock in a domestic corporation owned and held by a nonresident decedent shall be deemed property within the United States. * * *

"(e) The amount receivable as insurance upon the life of a nonresident decedent, and any moneys deposited with any person carrying on the banking business, by or for a nonresident decedent who was not engaged in business in the United States at the time of his death, shall not, for the purpose of Part I of this title, be deemed property within the United States. * * *"

The respondents meet the contentions of the commissioner in two ways. First they say that the intangibles mentioned should not be held to be "property situated in the United States" at the time the decedent died. And, second, if Congress intended to subject these intangibles to the estate tax, it was powerless to do so because of the fifth amendment.

To decide the first question, it is necessary to determine whether such securities as these came within the "phrase property situated within the United States" as of the time the statute was passed and took effect. We shall confine our consideration to intangible personal property. It had long been the law of the United States in respect to state taxation that such property had its taxable situs at the domicile of the owner regardless of the place where the paper evidences of the obligations were kept. State Tax on Foreign Held Bonds, 15 Wall. 300, 21 L. Ed. 179; Kirtland v. Hotchkiss, 100 U. S. 491, 25 L. Ed. 558; New Orleans v. Stempel, 175 U. S. 309, 20 S. Ct. 110, 44 L. Ed. 174. This limitation on the state taxation of intan-

gibles was, however, modified in Blackstone v. Miller, 188 U. S. 189, 23 S. Ct. 277, 47 L. Ed. 439, to permit New York to tax the transfer by will of debts due the decedent, who died domiciled in Illinois, from residents of New York. This decision recognized as lawful the power of the state of the domicile of the debtors to tax the transfer of the debts. It did not expressly hold that intangible property had a taxable situs also at the place where the securities themselves were located, but the close applicability of the reasoning of the opinion to give such a taxable situs cannot be gainsaid. Blackstone v. Miller was expressly overruled in Farmers' Loan & Trust Co. v. Minnesota, 280 U. S. 204, 50 S. Ct. 98, 74 L. Ed. 371, 65 A. L. R. 1000, but that was not until some years after the statute here involved was passed, and cannot help in determining what Congress meant in 1924 by "property situated in the United States." In De Ganay v. Lederer, 250 U. S. 376, 39 S. Ct. 524, 63 L. Ed. 1042, it was held that securities owned by a nonresident but physically present in Philadelphia in the possession of an agent who collected and remitted the income to the owner abroad were property. These securities were stocks, bonds, and mortgages secured upon property in the United States, or payable by persons or corporations domiciled in the United States, and it was further held, on the authority of Blackstone v. Miller, supra, among other decisions cited, that such property was within the United States and so within the meaning of Congress in taxing the income derived from property owned in the United States by persons residing elsewhere. While this case dealt with income, that alone does not serve to distinguish what was held as to the location of the income producing property. At least as to the bonds of domestic corporations, the state of the declared law in 1924 would afford good basis for the belief that Congress meant to include the intangibles here involved in the gross estate situated in the United States of a nonresident decedent. Moreover, in Tappan v. National Bank, 19 Wall. 490, 22 L. Ed. 189, it has been held that shares of stock in a national bank could be made taxable at the place where they actually were regardless of the domicile of their owner. But these cases dealt with the power to tax; the intent to tax being plain. Here we are for the present not concerned with the power but with the intent to subject this property to the estate tax. Did the statute throw no further light on the intent of Congress, perhaps the foregoing would have been enough to put this property within the language used,
especially since Treasury regulations under previous revenue
47 laws had provided for the inclusion in the gross estate of a
nonresident decedent of bonds physically present in the United States. See T. R. 37, art. 60, and T. R. 63, art. 53; National Lead Co. v. United States, 252 U. S. 140, 40 S. Ct. 237, 64 L. Ed. 496. As to these regulations, however, see Shenton v. United States (D. C.) 53 F. (2d) 249.

But in section 303 (d) of this statute Congress expressly provided that "stock in a domestic corporation owned and held by a

nonresident decedent shall be deemed property within the United States. * * *" As the Board of Tax Appeals pointed out and the respondents insist, the express inclusion of such intangibles implies the exclusion of others under the maxim, expressio unius est exclusio alterius. Had Congress intended to include stock in a domestic corporation, and certainly there is much more reason to treat such intangibles as localized in this country than to treat stock in a foreign corporation or foreign bonds as property situated in the United States, there would have been no purpose in making the express provision to that effect. All question of power to tax aside, the most it would have done, so it would seem, would have been, if such stock was understood to be within the general coverage of the law, to have especially provided that it should be deemed property within the United States even though the certificates were kept elsewhere. The special treatment of the proceeds of life insurance in section 303 (e) as property not within the United States would by the same token tend toward a contrary view of what Congress intended to be included generally were is not for the fact that section 403 (b) (3) of the revenue act of 1918 (40 Stat. 1098) provided that: "The amount receivable as insurance upon the life of a nonresident decedent where the insurer is a domestic corporation, shall be deemed property within the United States." In section 403 (b) (3) of the revenue act of 1921 (42 Stat. 279) the above-quoted provision of the 1918 act was repealed, and the express repealing provision of the 1921 act was simply carried into the revenue act of 1924. So, too, might the special treatment of money on deposit with banks or bankers in section 303 (e) be thought to indicate the intent to treat all other debts as property situated in the United States when the debtors were domiciled there. When, however, effect is given to the commercial aspects of the relation between a foreign depositor and his banker in this country with its influence on the world trade of this nation, and it is recognized that this provision was but the reaffirmation of the general rule that debts have no taxable situs at the domicile of the debtor, we think it is more reasonable to believe that Congress was merely careful to assure such business that it would not be hampered.

In any event, the uncertainty which exists respecting the intended scope of the law as to intangible property of nonresident decedents which has no business situs in this country makes it doubtful that Congress meant to subject it to the estate tax. That being so, the doubt, under well-known principles, should be resolved in favor of the taxpayer. Gould v. Gould, 245 U. S. 151, 153, 38 S. Ct. 53, 62 L. Ed. 211.

As we are constrained to hold that the statute does not reach this property for purposes of taxation, it is unnecessary to express any opinion as to the power of Congress to tax it.

The decision of the Board of Tax Appeals is affirmed.

L. HAND, Circuit Judge, concurs with supplemental memo.

48 United States Circuit Court of Appeals for the Second Circuit

No. 462. October term, 1931

Argued June 13, 1932. Decided July 29, 1932

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

ERNEST BROOKS, HAROLD WILSON BROOKS, AND WALTER DOUGLAS Brooks, as Executors of the Will of Ernest Augustus Brooks, respondents

Appeal from the United States Board of Tax Appeals

Before L. HAND, AUGUSTUS N. HAND, and CHASE, Circuit Judges

Concurring opinion

L. HAND, Circuit Judge (concurring).

I hardly think that the internal evidence of the statute would have alone been enough to turn the scale with me in the taxpayer's favor. I rely chiefly upon the fact that if the Treasury be right, the act is open to very grave constitutional doubts. It is now settled that a State may not tax the transfer of bonds at the domicile of the obligor, when the obligee lives in another State. Farmers' L. & T. Co. v. Minnesota, 280 U. S. 204, 50 S. Ct. 98, 74 L. Ed. 371, 65 A. L. R. 1000; Baldwin v. Missouri, 281 U. S. 586, 50 S. Ct. 436, 74 L. Ed. 1056, 72 A. L. R. 1303; Beidler v. South Carolina Tax Commission, 282 U. S. 1, 51 S. Ct. 54, 75 L. Ed. 131. We should have to say that a different doctrine applies when Congress taxes the transfer of bonds of an American corporation held by an Englishman. Certainly the cases are so far parallel as to put the validity of such an act in great question.

49 In United States Circuit Court of Appeals, Second Circuit

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

ERNEST BROOKS, ET AL., AS EXECUTORS, ETC., RESPONDENT

Judgment filed August 5, 1932

Appeal from the United States Board of Tax Appeals.

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said United States Board of Tax Appeals be and it hereby is affirmed.

It is further ordered that a mandate issue to the said board in accordance with this decree.

WM. PARKIN, *Clerk.*

50 [File endorsement omitted.]

51 [Clerk's certificate to foregoing transcript omitted in printing.]

52 Supreme Court of the United States

Order allowing certiorari

Filed December 5, 1932

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(Indorsement on cover:) File No. 37,193. U. S. Circuit Court of Appeals, Second Circuit. Term No. 496. David Burnet, Commissioner of Internal Revenue, petitioner, v. Ernest Brooks, Harold Wilson Brooks, and Walter Douglas Brooks, as executors of the will of Ernest Augustus Brooks. Petition for a writ of certiorari and exhibit thereto. Filed November 4, 1932. File No. 37,193.

U. S. GOVERNMENT PRINTING OFFICE: 1932